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5, 1962

IN THE PRIVY COUNCIL

No. 19 of 1960

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N

EVELYN LETITIA PEIRIS

Appellant

- and -

MILLIE AGNES de SILVA

Respondent

R E C O R D    O F    P R O C E E D I N G S

VOLUME 2

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UNIVERSITY OF LONDON  
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DARLEY CUMBERLAND & CO.  
36, John Street,  
Bedford Row,  
London, W.C.1.  
Solicitors for the Appellant.

EDWIN COE & CALDER WOODS,  
7, New Court,  
Lincoln's Inn,  
London, W.C.2.  
Solicitors for the Respondent.

RESPONDENT'S EVIDENCE

No.39

MRS. M. A. de SILVAIn the  
District Court  
of ColomboRespondent's  
Evidence

No.39

Mrs. M.A.de  
Silva

Examination

Millie Agnes de Silva. Sworn, 44, Melbourne Avenue, Bambalapitiya. Respondent.

10 I am the widow of J.F.L. de Silva. My father was the deceased. My father first married Sarah Bastiana Fernando. She was my mother. I am the only child by that marriage. When my mother died I was five years old. Thereafter the deceased married his second wife Nancy Catherine Charlotte Perera. By her my father had one child who is the Petitioner in these proceedings. She was born in 1922.

Q. How was your father after your mother's death?  
A. He was very kind to me. I married J.F.L. de Silva in 1934. He was an Architect working in partnership with Mr. Billimoria. He had received his education in England. My marriage took place on 1.1.34. My father dowried properties to me. I produced deed No.1724 of 17.1.34 marked R1 and deed No.1725 of 17.1.34 marked R2 by which properties were dowried to me. One of the properties dowried to me was Nancy Villa in which my father had a life interest. He did not have the life interest over any other property gifted to me. He had a life interest only in respect of the lands at Kaldemulla, and not in the others. In October 1934 my father gifted certain properties to the petitioner. At that time she was about 10 years old.

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Q. Why did your father do that?  
A. My stepmother threatened my father thinking that after so much property had been given to me the rest of the properties also would be given to me. She wanted properties to be settled on my stepsister. Thus my father gifted the properties by Deeds R3 and R4 dated 2.10.34. Those properties were subject to a life interest in favour of his wife Nancy.

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Q. Is it true that your husband advised your

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continued

father to gift the properties to your stepsister?  
A. No. After my marriage I lived at St.Thorn,  
Arthur's Place, Bambalapitiya. I resided in that  
house for about 2 years. My father paid the rent  
for that house. From there I went to Alfred House  
Avenue Colpetty. I resided in that house till I  
came to Melbourne Avenue in 1952. I came to Mel-  
bourne Avenue house on 15 March 1952.

Q. Who paid the rent of the house in Alfred House  
Garden? A. My father. My husband died on 10  
6 October 1942 When he died I had four children  
named Lanka Lalama Arunasiri de Silva aged 7,  
Barn Jesita aged 5, Loquita Chandrani aged 3 and  
Shirani 2 years old. When my husband died I  
was residing at Alfred House Avenue. There  
was an administration case in respect of my hus-  
band's estate. Messrs. de Silva & Mendis Proc-  
tours attended to that matter.

Q. Why did you go to Messrs. de Silva & Mendis?  
A. Mr. Felix de Silva was a good friend of my 20  
husband.

Q. Was it you who attended to the various affairs  
connected with his testamentary case?  
A. It was my father who helped me in the adminis-  
tration case. He helped me until his death.  
When my husband died I was about 30 years old.

Q. Was your father very sorry about your husband's  
death? A. Yes.

Q. How did he treat you after your husband died?  
A. As I had no one to help me he was more affec- 30  
tionate to me than before.

Q. Was he attached to your children?  
A. Yes. He was very much attached to them.

Q. When did your father buy this house at Mel-  
bourne Avenue? A. In October 1951. He  
bought it for Rs.118,000.

Q. Did you pay anything out of that price?  
A. My father had one lakh and he was short of  
money, and he asked me whether I could lend him  
some money. I gave him as a loan Rs.18,000 to 40  
make up that amount.

Q. After the house was bought did your father  
suggest to you as to where you should live?

A. At the time he bought the house there was no one living there. It was vacant. He told me that I need not any more continue to live in a rented house and requested me to go into occupation of the Melbourne Avenue House.

Q. Had repairs to be effected to that house?

A. Yes. Repairs were in fact effected by me. The repairs cost me about Rs,30,000. I went into occupation of the house at Melbourne Avenue on 15 March 1952. From Alfred House Avenue I went along with my father in my car to Melbourne Avenue House and I handed the key to my father who opened it and gave over the possession to me saying, "Here, this is your house." I resided in the house thereafter.

Q. This house has been gifted to you by your father? A. Yes, my father later gifted the house to me. That was in January 1953. He gifted the house to me because I asked for it.

Q. How long prior to the execution of the deed of gift did you ask your father to gift it to you? A. About a month before the deed of gift was executed.

Q. Why did you make that request?

A. Because in 1952 Dulcie was pardoned - as far as I could remember it was in the month of October. After that my father gave her a sum of Rs.20,000. Then I thought now that Dulcie has been pardoned and a sum of money given to her, somehow or other Dulcie would worry him and get the Melbourne Avenue house given to her. Therefore I asked for it.

Q. When you asked your father to gift the house at Melbourne Avenue to you what did he say?

A. He laughed and said, "You need not wait till I am dead for you to become the owner of this house. Before that I will do it", and he executed the deed. I produce certified copy of that deed marked R30. The Proctor who attested that deed is P.E.S.Wijesekera. Dulcie is married to Austin Peiris. She eloped with him in 1940. On the day that Dulcie eloped with Austin Peiris my father was at Nawgala Estate in Matale.

Q. Did he come to Kaldemulla on the date of the elopment? A. Yes, in the night.

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Q. Did you also go there? A. Yes. I received a message that Dulcie had eloped and I went to see.

Q. How did your father take that elopement?  
A. He was grieved and very angry.

Q. And finally he went to Matala to reside on his estate at Nawgala? A. Yes.

Q. Did he instruct you to do anything in regard to Nancy Villa? A. He ask me to send a notice to my stepmother to quit the house and he went to Nawgala. I sent that notice and my stepmother quitted the house. 10

Q. And she lived thereafter with Dulcie and her husband in the house at Laxapathiya? A. Yes.

Q. Did you know in 1940 that your father had executed a last Will? A. Yes. That is the last Will attested by Aelian Samerasinghe. My father told me of that last Will.

(Shown R9) Q. That is the Will that has been produced as R9 in this case? A. Yes. I went to see my father at Nawgala. My husband went to see my father. My children also went to see my father. When my husband died my father was still in residence at Nawgala. After my husband's death for all school holidays my father took me to Nawgala Estate Matale. 20

Q. Did your stepsister Dulcie ever go to Nawgala to see him? A. No.

Q. Did your stepmother ever go to Nawgala to see him? A. No. Austin Peiris did not got to Nawgala to see my father. 30

Q. Who was the lady looking after you father at Nawgala? A. Marina Fonseka. My stepmother sued my father for divorce on the ground of adultery.

Q. Was your father annoyed about that case?  
A. Yes, he was very annoyed. That case was finally settled. I knew Victor Fernando as the village headman. I have not talked to him.

Q. As a result of the settlement in the divorce 40

case did you hand anything to Dulcie?

A. The jewellery box which had been entrusted to me by my father was returned by me to Dulcie after the settlement in the divorce case. Dulcie herself came to my house and on a receipt given to me by her I gave it to her

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Q. Did your father tell you anything about a last Will attested by Mr. Felix de Silva?

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A. Yes, he told me that he had a writing like this.

Q. That is the last Will? A. Yes.

Q. With whom did he say the last Will was?

A. He told me that it was with Mr. Felix de Silva.

Q. Did he tell you about this last Will before or after its execution? A. Before and after.

At the time that that Will was executed my father was residing permanently at Nawgala Estate. He came to reside permanently at Kaldemulla after he sold Nawgala Estate.

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Q. At the time he came to reside at Kaldemulla permanently in which house were you residing?

A. In the Melbourne Avenue house.

Q. Between the year 1940 and the year he came to reside at Kaldemulla permanently did you and your children visit your father regularly at Nawgala? A. Yes.

Q. Did your stepsister ever go to Nawagala during that period? A. No. Never.

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Q. Did her children ever go? A. No.

Q. Did her husband ever go? A. No.

Q. Did his wife Nancy Catherine Charlotte Perera ever go to him? A. No. I was in Court when the witnesses for the petitioner gave evidence.

Q. Is it correct that the driver Banda held you by the hand when you were going for a bath at a spout at Nawgala? A. Such an incident never took place.

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Q. Did your father at any time find fault with you in regard to driver Banda?

A. Never. Banda took employment under me about 6 months prior to my husband's death. He is still under me as driver.

Q. Is it correct that your father at any time asked you to dismiss driver Banda?

A. No. My father came to reside at Kaldemulla after the sale of Nawgala Estate. Roughly Nawgala Estate was sold in July 1952.

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Q. Is it correct that soon after his arrival at Kaldemulla he got his driver John to bring you to Kaldemulla?

A. No.

Q. Did he ever at any time after he came to reside at Kaldemulla complain to you about the driver Banda?

A. Never. I produce R31 certified copy of Deed No.3016 dated July 1952. A certified copy was obtained by me for the purpose of this case. Sometime in October 1952 my father pardoned Dulcie, and he gave her a sum of money. My father told me of this. It was thereafter that I asked my father to gift the Melbourne Avenue house property to me and my father gifted it to me.

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Q. Did you get moneys from your father off and on for your expenses?

A. Yes, whenever I was short of money I got it from my father.

(Shown R27a) This is my son Lala's writing. Lala is now in England. This is the counterfoil book of my father.

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(Shown R28) This is also a counterfoil book of my father.

(Shown R28a) The Sinhalese writing is my father's. This Rs.250 was given to me to go to see the Perahera.

(Shown R29a) This is also my father's handwriting. This was given to me by my father during Christmas holidays. He sent me Rs.160/- for me to make dresses for my children for Christmas. My father was very fond of my children.

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(Shown R32 Autograph book) (Shown page 32a) This is my son Lala's autograph book. The writing on

page R32a is my father's

Q. To your knowledge did Mr. Peiris visit your father at Kaldemulla after his arrival from Nawgala? A. He had never visited my father after marriage.

Q. Did your stepmother ever visit the deceased? A. No. She came there only after his death.

Q. Did Dulcie visit the father after he came to reside at Kaldemulla? A. She came one day to get his pardon, and that is all.

Q. In 1953 your father was ill? A. He was ill from 1952 and became worse in 1953. I took him to Dr. Wijerama and Cyril Fernando. Once in six months I used to take my father to Dr. Cyril Fernando to be examined by him. Finally he fell seriously ill in January 1954.

Q. And you came to reside with him? A. Yes.

I resided with him for about 3 weeks to a month before his death.

Q. Besides yourself there was this woman Marina Fonseka? A. It was she who was with my father in the house.

Q. Your father was treated during this time by the Nilammahara Priest? A. Yes, for about a week or two.

Q. During the illness did Dulcie ever come to see your father? A. On the 16th January she came to see my father. No. It was on the 16th February she came to see him.

(Shown P10) Q. Who wrote this letter? A. The upper portion of the letter was written by Simon Perera. The lower portion by my father.

Q. Why was that letter written? A. On the 16th Dulcie came to see my father. She was allowed to see him. On the 17th and 18th she came on to the road and left. She was not allowed to see my father. My father did not like Dulcie to see him. On the 19th also Dulcie was said to have walked to and fro on the road, and on that occasion he became very

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serious. Through fear he was crying and shouting till it dawned. Then in the morning he called Simon Perera and told him that he understood that Dulcie had been walking on the road and thereby his illness was becoming worse and gave him the paper and asked him to write this letter. Then after the upper portion of the letter was written by Simon Perera and given to him for signature he wrote the last two sentences and signed it.

Q. By whom was this letter sent to Dulcie?  
A. Through Setan. My father was removed to hospital on the 20th evening. Dr. Anthonisz advised that my father should be removed to hospital. Dr. Anthonisz came to the house and left ahead of us in his car. I took my father, my son and my cousin in my car following the doctor.

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Q. At that time were Mr. Peiris or Mrs. Peiris about?  
A. Dulcie, my father's wife and Mr. Peiris were at the entrance to the house, and while I was taking my father Dulcie shouted out "Are you taking the father without my knowledge or stealthily". He was taken to the Central Hospital. He died on the 22nd after an operation. Dulcie and Mr. Peiris came to the Central Hospital. On the 22nd evening the body was brought to Nancy Villa at about 7 or 8 p.m. My father had a Humber car which he bought shortly before his death. The driver was John.

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Q. On the 23rd was there any dispute about this car?  
A. Yes. On the 23rd morning I garaged the car. I put the car into the garage and locked it up.

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Q. Why did you do that?  
A. Because I came to know ... (Sir Lalitha objects to this evidence as hearsay. Mr. Navaratnarajah states that he is not relying on the truth of the statement, but merely to explain the conduct of this witness in locking up the car. He withdraws the question).

Q. On certain information you received you had the car locked up. Then?  
A. Having got the car locked up on the 23rd morning I gave a car belonging to a cousin of mine to Mr. Peiris to be used to make the funeral arrangements. On the 23rd morning when my

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stepmother along with Dulcie and Mr. Peiris asked me for my father's car I told them that I would not give that car out, but they could use either my cousin's car or my car with petrol supplied by me, or if they used any other car I was prepared to pay the hire. This conversation took place at about 10 or 11 a.m.

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10 Q. Later in the evening was there any trouble about this car? A. From the morning my cousin's car was used and at about 7.30 again my stepmother Mr. Peiris and Dulcie asked for my father's car to be used the following day.

Q. What did you tell them? A. I bluntly refused them the car.

Q. Then what happened?

20 A. Then from the front of the house little by little they started abusing me. From 7.30 till about 10 they continued to abuse me, and the abuse became vigorous about 10.30 p.m. First they asked me, for the switch key of the car, then for the key of the iron safe. Then my stepmother said that if the car was not given they would forcibly break open the garage and remove my father's car and my car and burn them. And I saw Mr. Austin Peiris leaving the house to bring some rowdies. I saw several bad people moving about my house. And my stepmother was insisting on the switch key of my father's car and following me. She was also insisting on 30 having the key of the iron safe. Then I told my stepmother that after I had consulted my lawyers or in the presence of the Police and if I am advised that it was good for me to give her the keys I will give them to her. After I came to know that they were trying to assault me and my son and they were trying to use force on me I sent word to my lawyers, Messrs. de Silva and Mendis, and to the Police - Mr. Bertram Fernando came representing Messrs. de Silva and Mendis and the Police also came. I told Mr. Bertram 40 Fernando and Inspector Joachim my story. As I was relating my story to Mr. Joachim. Mr. Caldera arrived when I related my story to Inspector Caldera before recording my statement, or what I had told the Police, he took away the car and the iron safe to the Police Station. Then all their shouts and abuse stopped after the car

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continued

was removed, and until the funeral I retained 2 or 3 Police Constables in the house for my safety.

Q. You made a complaint to the Police on the following day? A. Yes. I produce that complaint marked R33 dated 24.2.53.

Q. Did Caldera come to the house on the 24th? A. Yes. The funeral took place on the 24th at 4.30 p.m. After the funeral was over I entrusted matters to Messrs. de Silva & Mendis. I was in the house about 3 weeks to a month prior to my father's death. The safe keys were with me.

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Q. Did you open the safe? A. Yes, whenever I required money I spend for my father.

Cross-examined

Cross-  
examination

I understand English but I prefer to speak in Sinhalese. I studied up to J.S.C. form at Princess of Wales College Moratuwa.

Q. What is your present illness?

(Sir Lalitha states he has put this question as the witness asked for permission to sit down while giving evidence)

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A. I am having urinal trouble. When my mother died I was about 5 years old.

Q. At that time you must have subsequently learned when your first mother died that your father was not a rich man at all? A. That is correct.

Q. It was after your father married Nancy Charlotte that he became quite a wealthy man? A. Yes, it was after that my father went to India and earned well. He made money in India as a building contractor.

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Q. He bought the property in Moratuwa and elsewhere after his second marriage? A. No. Nancy Villa was bought by my mother. That was about a year before her death.

Q. Are you in a position on the next date to produce the deed? A. Yes.

Q. Why was it called Nancy Villa?

10 A. The land had been bought and the necessary material to put up a house had been got ready when my mother was living. As at a time my father wanted to put up the house my mother was expecting a child he put off building the house. In the meanwhile my mother died. Then he married his second wife and when he built the house he named it after her. My father bought a land in my mother's name, but he built the house after his second marriage. When my father married Nancy as a child I started calling her mother and continued to call her such. I referred to her as Amma. I was about 6 years old when my father married Nancy.

Q. Was she kind to you then?

A. No. She did not treat me well.

20 Q. Does your recollection go as far as you were 7 years old? A. From the time I came to remember things, namely from the age of about 8 or 9, until I got married I was not treated well by Nancy.

Q. What do you mean by "not treated well"?

A. I was not given to eat well. I was not given to dress well. Whenever I asked for school fees she put it off. She was not very kind to me.

Q. In other words she was a wicked stepmother to you? A. Yes.

30 Q. And how did you treat your stepmother?

A. I did not take any of those things seriously because I had been advised by my father not to take her seriously.

Q. And you loved your stepmother and treated her kindly? A. I did not love her as I would have loved my own mother. But I did not take her treatment towards me seriously.

Q. She was a wicked stepmother to you. Did you love her or treat her kindly? A. No.

40 Q. In other words she treated you like a wicked stepmother and you heartily reciprocated her feelings to you? A. Yes. I remember

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Joseph de Mel. He was a resident of the village and I knew him by name. I did not know him other than by name. I have never spoken to him or written a letter to him.

Q. How old were you when you knew of the existence of Jos. de Mel? A. I was about 18 years old.

Q. Were you out of School at the time? A. Having left Princess of Wales College I was at home learning painting. I wanted to learn painting for the sake of knowledge. 10

Q. It was during that time that you came to know of the existence of Jos. de Mel? A. I knew the man but I had not spoken to him.

Q. Was it after you gave up going to School and took to painting or before that that you knew of this man? A. Even before I took to painting I knew. The man being a resident of the same place I had known him when I attended school.

Q. Could you tell me now how old you were when you first came to know of the existence of this man? A. I cannot say. 20

Q. It isn't correct to say that you came to know of his existence after you left school? A. I had known him by name when I was a girl. I cannot say when I first knew him by name.

Q. How far away did Jos. de Mel live? A. More or less 1/4 of a mile. I do not know what school he attended. I attended the Princess of Wales College.

Sgd: V. Siva Supramaniam 30

A.D.J.

(Further hearing 27.2.56)

D.C.15908/T.

27.2.56

Appearances as before.

(Mr. Navaratnarajah marks the Last Will attested by Mr. Felix de Silva dated 13.5.50 as R34.

Mr. Navaratnarajah states that he had marked document R11 when the petitioner was in the witness box but that by inadvertence he had not questioned his client in regard to it and had not formally produced it through her. He states that he will formally produce it through his client in the course of re-examination, but that Counsel for the petitioner might cross-examine her on the document.)

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10 Millie Agnes de Silva - Recalled - Sworn :

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Cross-examination continued:

Cross-examination continued

I have brought the deed relating to the land on which Nancy Villa was constructed.

(Mr. Navaratnarajah hands over the deed to Counsel for the petitioner)

20 Deed 17018 is the deed on which the land was bought in my mother's name. My mother was Sarah Bastiana Fernando. The name of the land on which Nancy Villa is built is Udavesgetiyawa. I cannot say the extent.

(Mr. Navaratnarajah marks a certified copy of Deed 17018 dated 31.12.15 as R35)

Q. Are you quite certain that this is the land on which Nancy Villa was built?

A. Because I find on the deed my mother's name and I know the fact that it was bought in my mother's name I produced the deed.

30 Q. You do not know whether this is the land on which Nancy Villa was built? A. I have not got the deed examined by a proctor to be certain. The different blocks of land have different names.

Q. Can you undertake to say that this is the land on which Nancy Villa was built?

A. I can.

40 Q. How long is the land on which Nancy Villa was built? A. Number of perches. I cannot give the exact extent. It is more than 1/4 acre. It is less than 1/2 acre. It is between 1/2 and 1/4 acre. My mother bought the land on which Nancy Villa was built.

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examination  
continued

Q. Within the boundaries the extent is 5 coconut trees plantable extent? A. She bought this land and in order to build the house adjoining blocks were also bought.

Q. This land is 5 coconut trees plantable extent?  
A. It may be so.

(Witness reads the deed) It is 50 coconut trees plantable extent.

Q. 1/20th share of a land of 50 coconut trees plantable extent? A. Yes. I know Velun Baas. 10

Q. Nancy Villa, your mother and father were living in Velun Baas' house? A. I do not know. I was a child.

Q. When the house was being built you remember you were in Velun Baas' house? A. I have a faint recollection. Velun Baas' son is Joseph de Mel.

Q. It was in the house of Velun Baas that Nancy Villa was built which had been rented out by your father when you were about 8 or 9 going to school? A. Nancy Villa was not built on the site of the old house. 20

Q. It was ~~on the same~~ land on which you were living? A. Not the same land. Nancy Villa had been built on a piece of land about 1/4 of a mile away from the house of Velun Baas.

Q. The house in which you as a child lived when this gentleman married his second wife was a house belonging to Velun Baas? A. Yes. 30

Q. It was on that site that Nancy Villa was built? A. No. It was a 1/4 mile away on a different land. I have not spoken to Joseph de Mel. It is not true to say that I wanted to elope with Joseph de Mel. It is an absolutely false story. I never had a desire to elope nor did I ever try to elope with him. It is a diabolical lie. I know the boarding school near Galpalliya.

Q. Did you go to the boarding school near Galpalliya by any chance? A. Yes. 40

Q. How long did you stay there? A. About two years.

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Q. That was after you left Princess of Wales College, Moratuwa? A. A year after I left Princess of Wales College I was a boarder in the boarding school near the Galpalliya. When I left Princess of Wales College I was about 17 years of age. Then I stayed at home.

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10 Q. And last time you said you were doing painting for the sake of education? A. Yes.

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Q. About a year afterwards you were sent to the boarding school near Galpalliya? A. Yes. I have been present in Court during all the dates of inquiry listening to the evidence being given. I was instructing my lawyers.

Cross-examination continued

20 Q. On the very first date of inquiry this is what Evelyn said as soon as she gave evidence (page 2 of the evidence) "My stepsister was preparing to elope with Joseph de Mel"? A. Yes.

Q. "I am aware of it personally"? A. Yes.

Q. Your Counsel wanted to know whether she knew it personally? A. Yes.

Q. "My father got the Police to place guards and my mother saved the respondent from eloping by keeping her in the house of a relative and looking after her"? A. Yes.

Q. Did you instruct your lawyers that this was absolutely false? A. Yes.

30 Q. After that evidence was given by Evelyn did you remind your lawyers of your instructions?

(Mr. Navaratnarajah objects on the ground that the question assumes that the instructions were given by the witness before the petitioner gave evidence.

ORDER. - I uphold the objection.)

Q. Did you give instructions to your lawyers



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continued

that this was untrue before the inquiry commenced? A. It was after the petitioner gave evidence that I understood that I had prepared to elope.

Q. Therefore your instructions on this matter were given not before the inquiry started but after the inquiry started? A. Yes.

Q. You heard the cross-examination of Evelyn. Not one question was put with regard to this matter to Evelyn?

10

(Mr. Navaratanarajah objects on the ground of irrelevancy. Mr. Navaratnarajah admits that he did not put a single question to the petitioner or to Nancy Catherine Fernando on this point.

Sir Lalitha wants it to be recorded that the submission of Mr. Navaratnarajah was made despite his protests although the witness understood English.

ORDER -

20

I allow the question to be put.)

Q. Evelyn was in the box for two days? A. Yes.

Q. You heard no cross-examination of Evelyn on this point? A. Yes.

Q. Nancy Catherine gave evidence and this is what she stated (page 72) "Millie grew up and came of age"? A. Yes.

Q. "Millie was preparing to run away with one Mr. Joseph de Mel"? A. Yes.

Q. "I prevented that by protecting her at the relations and neighbour's house"? A. Yes.

30

Q. "After that her father got the house guarded by Police and prevented her running away and gave her in marriage to Mr. Fritz Silva"? A. Yes.

Q. She was cross-examined and you heard no questions in cross-examination with regard to that? A. Yes.

John Appuhamy gave evidence.

Q. He gave this evidence (page 201) "Q. Do you remember an incident connected with Mrs. Millie when she was a young girl? A. Yes."

Q. "She was making preparations to run away with Joseph Mel a son of Velun Baas"? A. Yes.

10

Q. "What happened then? A. The deceased came to know of it. He told me to go along with his wife to the college and bring Millie back"? A. Yes.

Q. "Shortly what happened thereafter? A. After she was brought home Mr. Fernando got the police to guard the house"? A. Yes.

Q. "What else? Anything happened? What happened in the night? A. The house was guarded till daybreak." A. Yes.

20

Q. "Then after a few days Millie was placed as a boarder in a school near the Galpalliya?" A. Yes.

Q. That is all utterly false? A. This is what happened.

(Mr. Navaratnarajah objects on the ground that it is a misleading question. The witness has admitted that she was in a boarding school near Galpalliya.

30

Sir Lalitha submits that it is proper for him to put the question. He submits it is a perfectly legitimate question.

ORDER - I allow the question.)

A. I never wanted or intended to elope. After I left Princess of Wales College I remained at home for one year, during which time I was learning painting, music, needlework and so on. My father received many proposals for me and one of the young men proposed to me was Joseph de Mel. Neither myself nor my father accepted

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Cross-examination continued

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Cross-  
examination  
continued

that proposal. As Joseph de Mel's party were insisting on that proposal my father suggested that I should go and remain in the boarding school for a short period of about three years. My father, for our own protection, made an entry at the Police station and received police assistance. I remained in the boarding school for 2 years and came back home and nothing happened.

Q. Was there a proposal to Dr. Annesley Perera of Beruwala, a brother of N.J.Perera? A. Yes. That did not go through. There was no trouble at home with regard to that. 10

Q. Your father did get some police to guard your house? A. Not to guard.

Q. Some police constables came there?  
A. As my father had asked for police assistance the police had come and patrolled near about our house.

Q. Actually your father had a watcher placed in your house? A. No. There were servants in the house who were also keeping watch. 20

Q. Why, did Joseph de Mel threaten to take you away by force? A. My father may have thought like that.

Q. Evelyn referred to a small incident in cross-examination that it was your husband who had requested your father to give a gift to Evelyn after you got married? A. Yes. I gave evidence in chief the other day and I denied that my husband had asked that. 30

Q. That is a small detail in this inquiry, isn't that so?

(Mr. Navaratnarajah objects on the ground that it is a matter for the court to decide and not for the witness to decide.

ORDER - I uphold the objection as the question is to elicit the opinion of the witness.)

(Shown R27) In Counterfoil G356003 the word "Nancy" is in my father's handwriting. In Counterfoil G 356004 "M.Simon" is in my father's 40

handwriting. (Shown R28a) This is my father's hand writing.

Q. It looks like either Willita or Millitā?  
A. I know it is Millita. I read it as Millitā. I think Counterfoil G.676500 is in my father's handwriting. I cannot say.

Q. The land bought by your mother (R35) which you referred to is a small property bought for Rs.60/-?  
A. Yes.

10 Q. I put to you several questions with regard to this document and after careful thinking you said that this was the land on which Nancy Villa was built?  
A. Yes.

Q. R2 is the deed of gift of Nancy Villa to you by your father?  
A. Yes.

Q. The deed has been accepted by Nancy Charlotte your step-mother on your behalf?  
A. Yes.

Q. That is the one woman you described as your wicked step-mother?  
A. Yes.

20 Q. Show me in the document R2 which parcel your mother got on R35?  
A. I cannot say because blocks were bought and Nancy Villa had been built on the blocks bought. I am unable to say as to which portion of the land where Nancy Villa stands is referred to in the deed R35.

Q. The deed on which your mother got title is deed 17018?  
A. Yes. That is a deed in favour of my mother.

30 Q. There are several parcels of land referred to in the Nancy Villa deed of gift to you R2?  
A. Yes.

Q. The first parcel is on a deed in favour of your father No.7173?  
A. Yes.

Q. The second parcel is on a deed No.11120 in favour of your father?  
A. Yes.

Q. The third parcel is on a deed No.333 in favour of your father?  
A. Yes.

Q. The fourth parcel is on a deed No.12615 in

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examination  
continued

favour of your father? A. Yes.

Q. The fifth parcel is on deed No.7172 similarly?  
A. Yes.

Q. The sixth one is on deed 18754 in favour of  
your father? A. Yes.

Q. The seventh one is on deed 8330 similarly?  
A. Yes.

Q. The eighth one is on another deed? A. Yes.

Q. Ninth similarly? A. Yes.

Q. Tenth similarly on deed 8829? A. Yes.

10

Q. 11th, 12th, 13th similarly? A. Yes.

Q. You still say that your mother was the owner  
of that land? A. Yes. I do not know how  
it has been described in the deed but I am aware  
of the fact that my mother bought the land. I  
deny that the land was bought by my father after  
he married Nancy Charlotte.

Q. You know that Evelyn Letitia was given her  
jewellery box by your father? A. My father  
wrote a letter to me requesting me to hand over  
the jewellery box to Evelyn. Evelyn came home,  
gave a stamp receipt and got the jewellery box  
from me. As far as I could remember that was  
in 1945. My husband was dead at that time.

20

Q. Have you got the receipt?

(Mr. Navaratnarajah states that he is  
searching for the receipt and will make  
it available to Counsel for the peti-  
tioner)

I produce R36 the receipt dated 15.8.44.

30

Q. Who is the witness who has attested your  
signature? A. It was not attesting my sig-  
nature. One John came along with Dulcie. The  
driver was also present. Then the both of them  
signed.

Q. Whose signature is this? A. This is my  
driver's signature. I call him in the house

Banda. I do not know his name correctly. Only one witness has signed this. The other has placed his thumb impression, as he was illiterate. The signature is Banda's, my driver. Banda was engaged I think six months before my husband died. He is still in my service. When my husband died I was about 30 years old. I had a child who was two years old at the time my husband died. That was the youngest child. Banda is still in my service.

10

Q. Is he referred to as Banda mahatmaya at home? A. Never.

Q. Not by you, but by your servants? A. No. His salary is Rs.100/- a month. He is not a married man. Apart from his salary he has not been given any rooms. There is a room allotted to all my male servants and Banda occupies that room with the other male servants. His meals are provided from the house like other servants. His salary is Rs.100/- and he is given meals and the room to occupy with the other servants. The Melbourne Avenue house is an upstairs house. This room is downstairs, next to the kitchen. In this bungalow downstairs there is one office room and a small room in which I have my books and papers. The inquiry has gone on for about 14 days so far. It was in 1944 that the jewellery was returned to Dulcie.

20

30

Q. You heard Evelyn Letitia giving evidence that her father bought her a pearl set which she was wearing in Court that day?

A. I do not know whether the pearl set my father bought was the set she was wearing at the time she gave evidence in Court.

(Mr. Navaratnarajah states that the witness Evelyn did not say that she was wearing in Court the pearl set referred to)

40

Q. Evelyn gave evidence (page 3): "My father got angry with me when he went away. Later on we made up and my father met me in the office of M.C.F. Peiris, Broker, and he bought a pearl set of jewellery for me"? A. Yes.

Q. "I still have that with me"? A. Yes.

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examination  
continued

Q. Did you instruct your lawyers that that evidence was untrue?

(Mr. Navaratanarajah objects. He says the witness should be first asked whether she admits it or not.

Sir Lalitha withdraws the question.)

Q. Is the statement that her father bought her a pearl necklace true? A. It is true that she was bought a pearl set of jewellery by my father. That was the pearl set of jewellery which she used until I gave her the jewellery box. My father wrote to me saying that Dulcie will be calling on me for the jewellery box and to give the jewellery box to her and to give her the pearl set which I had with me and get back the pearl set she had with her and keep it with me until he came. At the time the letter was written to me my father was living at Navagala.

10

Q. Is it true that your father bought a pearl set of jewellery for Evelyn and gave it to her in the office of Mr. M.C.F. Peiris?

20

A. Yes, that is correct.

Q. Roughly what year was that? A. Roughly in the year 1941 or so.

I heard Mr. A.V. Fernando, Proctor, giving evidence in this case.

Q. He stated that he and Victor Fernando, the retired headman who also gave evidence, saw your father with regard to a transfer of Navagala Estate in favour of Evelyn or her children?

30

A. Yes, but I do not know whether that was true.

Q. You cannot deny it? A. I can neither deny nor admit. I do not know.

(Evidence at page 40 (bottom) and top of page 41 put to witness) That evidence was given.

Q. So that the deceased had pardoned Evelyn long before October 1952? A. No.

Q. Your case therefore is that Evelyn was pardoned by the father only in October 1952?

A. She was pardoned after October 1952. Evelyn was

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given the jewellery box in 1944. The father bought Evelyn a set of pearl jewellery which he gave at Peiris' shop in 1941 or thereabouts.

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Q. If Proctor A.V.Fernando's evidence is correct, the father wanted to write a deed of Navagala Estate in favour of Evelyn or the children?

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(Mr. Navaratnarajah objects as it is a hypothetical question)

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10 Q. And yet you say that the father had not pardoned Evelyn prior to October 1952? A. My father pardoned Evelyn about August 1952.

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Cross-  
examination  
continued

Q. Your father told you he had written a last Will? A. Yes.

Q. The last Will that was written attested by Mr. Aelian Samarasinghe? A. Yes.

Q. In fact, he came and told you soon after he wrote that last Will? A. Yes. He told me he had left a last Will leaving all his properties to me.

20 Q. That he had made you his executrix? A. Yes.

Q. Thereafter your father came and told you he had written another last Will attested by Proctor Felix de Silva? A. Yes.

30 Q. He said he had left all his property to you again? A. My father told me that he had signed an agreement in regard to his funeral arrangements about 1945 or 1946 with Messrs. Raymond Bros. In 1950 he told me he had left a last Will where he had incorporated that agreement with regard to his funeral arrangements as well. He told me about the second last Will in 1950.

Q. He told you he had left you all the property and you were the executrix? A. Yes and also he told me about the funeral arrangements he had made.

Q. According to this last Will you would become the heir to all the properties he died possessed of? A. Yes.



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Cross-  
examination  
continued

Q. If he did not gift the Melbourne Avenue house property to you you would become the owner under the Will? A. Yes.

Q. I put it to you that you had come to know that the father had written another last Will? A. In which year?

Q. 1951 or 1952? A. After my Proctor wrote to me saying that my father had left a last Will in 1951 and that is being contested that I became aware of it. 10

Q. You did not know that in 1951 or 1952? A. No. I heard the evidence of Rev. Wikremanayake. I heard the evidence of the Nilammahara Priest. I heard the evidence of Proctor A. V. Fernando. I heard the evidence of the retired headman Victor Fernando.

Q. You still say that you never heard in 1951 or 1952 that your father had made another last Will in 1951? A. Yes.

Q. I put it to you that it was because you had heard that there was another last Will that you got the deed of gift from your father of the Melbourne Avenue property? A. No. 20

Q. Was it you who made a request to your father to give a gift of that property or was it your father who wanted to give it to you? A. I asked my father to give me a transfer of that property.

Q. What did your father say then? A. My father said it is not necessary to wait until I die for you to become the owner of this house. I will fulfil your desire. So saying he gave me a transfer. 30

Q. On the very day you asked him? A. No, about three weeks later.

Q. But before that you had gone into occupation of the Melbourne Avenue house property? A. Yes.

Q. You handed the keys to your father? A. When the house was being repaired the keys were with me and after repairs I handed the keys to 40

my father at that time. The house was repaired by me.

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Q. After the repairs were completed did you ask your father to come to that house?

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A. I had informed my father in regard to the time and date of my going into occupation of the house. My father came to my house in Alfred House Avenue and from there both of us came to the Melbourne Avenue house.

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10 Q. Then you went in front of the Melbourne Avenue house? A. Yes.

Mrs. M.A.de Silva

Cross-examination continued

Q. Then you handed over the keys to your father?

A. When we were starting from Alfred House Avenue I had given the keys to my father and the house belonged to him.

Q. It is not correct to suggest that you handed the keys to your father in Melbourne Avenue?

20 A. Yes. I gave the keys in Alfred House Avenue.

Q. Is this correct (page 264): "From Alfred House Avenue I went along with my father in my car to Melbourne Avenue house"? A. Yes.

Q. "And I handed the key to my father who opened it and gave over possession to me"?

A. Yes.

Q. Where was the key given to your father, was it when you came to Melbourne Avenue house or was it in Alfred House Avenue?

30 A. I cannot remember exactly where I gave the key.

Q. And then your father said 'this is your house, I resided in the house thereafter'?

A. He said from today you had better remain in this house.

Q. Your evidence is "here is your house"?

A. Yes.

Q. You handed over the key there and your father opens the house, gives you possession and says 'this is your house'? A. Yes. This

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Cross-  
examination  
continued

was in 1952 March.

Q. I put it to you that this is an entire fabrication by you because this never took place.

Your father had got angry with you?

A. I deny.

Q. You say that the father said in that fashion 'here is your house' and you went into occupation? A. Yes.

Q. Your father was rather temperamental?

A. According to his age. 10

Q. He got angry that Evelyn ran away with Peiris?

A. Yes.

Q. He suspected his second wife? A. Yes.

Q. He left his home? A. Yes.

Q. Proceeded to Mr. Aelian Samarasinghe and made a last Will? A. So he told me.

Q. Then he went to Matale?

A. This incident took place about that time. He went to Matale to reside permanently in 1941 or 1942. I know a person named Maria Aponso. I know Ebert Fernando, a cousin of mine. 20

Q. Maria Aponso is the mother-in-law of Ebert Fernando? A. No.

Q. Related to Ebert Fernando? A. I do not know.

Q. Maria Aponso was living with your father in Matale for sometime? A. I do not know that personally but there was a talk that Maria Aponso went and stayed with my father for a week or so. 30

Q. Is it not correct that it is you who took Maria Aponso to Matale? A. That is not correct.

Q. In the divorce case that was filed by Nancy Charlotte the allegation was that your father was living in adultery with Maria Aponso?

A. I do not know.

Q. Up to date you do not know that that was the allegation in that case? A. There was one Maria Fonseka who was living with my father to help him until he died. I do not know whether allegations were made with regard to Maria Aponso or Maria Fonseka in the case filed by Nancy Charlotte, but whatever the allegations they were all false.

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Cross-  
examination  
continued

10 Q. Is it false to say that Marina Fonseka was living as the mistress of your father?  
A. That is false.

Q. How many years did Marina Fonseka live with your father? A. From about 1942 until he died Marina Fonseka lived in the house of my father.

Q. Marina Fonseka and your father adopted John Appuhamy's child as a child? A. I do not know that.

20 Q. When you visit your father in Matále you used to stay at High Walton Estate? A. Yes.

Q. And from High Walton Estate you used to come with your children to see your father in Navagala Estate? A. Yes.

Q. You never stayed any nights in Navagala Estate? A. Casually. In the Navagala Estate bungalow there were two rooms.

Q. In what room did you sleep when you stayed that night? A. My children and I slept together in one room.

30 Q. And your father and Marina Fonseka occupied one room? A. I closed my door and slept. I do not know whether they slept in one room or not.

Q. Did you ever go into that other room at all? A. During the day time I had been going into that room. I go there with my children to see my father. I do not go and pry into his matters in that bungalow.

40 Q. Did you go inside that other room at all? A. Yes, during the daytime I had been into that room.

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examination  
continued

Q. What do you mean by saying you do not pry into his matters? A. What I meant was that I do not go and look to see how they sleep, where they sleep or what they do.

Q. You did not see where your father slept that night when you slept in that house? A. Father slept in the next room.

Q. You did not try to find out where Marina Fonseka slept? A. I did not see her getting in to that room, but I saw a camp bed outside and I thought she was occupying that. 10

Q. How many times had you been visiting your father from 1940? A. I cannot remember. I cannot say. When ever I wanted I had gone to see my father and during the school holidays. Practically every year I had been to see my father. Sometimes I stay in Matale for 2 or 3 weeks.

Q. You had been to see your father on several occasions on each of those visits? 20

A. Until High Walton Estate was bought I went to Navagala Estate once for a period of 3 weeks and I had been going to Navagala Estate once a month or once in two months for a week end or go in the morning and return for the night. High Walton was bought about 1945 or 1946.

Q. Prior to 1945 or 1946 you used to go and see your father in Navagala Estate? A. Yes. On one occasion I stayed there for about three weeks. 30

Q. You tell the court now that your father was not keeping Marina Fonseka as his mistress? A. Yes.

Q. Is it not correct that your father used to come off and on to Kaldemulla from Matale? A. He has come.

Q. At one stage he went and resided in Nawinna for some considerable time having left Matale? A. No. About a month after my father fell out with Dulcie because she had eloped he took a house in Nawinna and stayed there for 6 or 8 months. As these people were going there and 40

troubling him he left Nawinna and came and stayed with me in my house for a week or so. Then he went to Navagala Estate.

(To Court:-

It was before he took up permanent residence at Matale that he stayed for about 6 or 8 months at Nawinna.)

10 Q. Is it not correct that after he got angry with Evelyn and his second wife he went straight on to Matale? A. It is correct.

Q. That is what Evelyn and Nancy Charlotte stated in evidence? A. Yes.

Q. He continued to stay in Matale for some time? A. He stayed there for a month or two and came back to Kaldemulla.

Q. And went back again to Matale? A. No. He came back to Kaldemulla and went to Nawinna.

20 Q. When did Maria Aponso go to Matale, was it before he came to Nawinna or after he came to Nawinna? A. After.

Q. And Marina Fonseka, when did she come, before or after Nawinna? A. I am making a mistake with regard to these two persons because the names are alike.

Q. Question repeated? A. I think in 1942.

30 Q. Did you tell Court that Marina Fonseka was living with your father from 1941?  
A. I cannot say whether it was from 1941 or 1942.

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(Lunch)

Sgd: V.Siva Supramaniam

A.D.J.

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15908/T

27.2.56

After Lunch

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Mrs. Millie Agnes de Silva. Sworn. Recalled.

Cross-examination continued:

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Cross-  
examination  
continued

Before High Walton Estate was bought I used to go and stay in the Nawgala Estate bungalow. On one occasion I stayed there three weeks with my children. There were several other occasions when I went to Nawgala before High Walton was bought. I was the most regular visitor there. 10

(R8 read out) It is correct that in 1942 my father had separated from his wife about 2 years ago. If Marina Fonseka did not observe these requirements the Rs.1,000 will not be paid.

(Para.3 of R8 put to witness) Q. Is that correct?  
A. Yes.

(P21 read out) I heard the evidence given by the petitioner.

Q. You tell His Honour on oath that Marina Fonseka was not the mistress of your father? 20

A. What I say is that she was not kept as his mistress, that is, to live as husband and wife. She was engaged by him to look after him. That is what I say.

Q. Even after I have referred to these documents, after I referred to the terms of the agreement and the adoption referred to you, you tell us that she was not living as the mistress of your father? 30

A. Yes, I was not aware of the agreement of adoption of the child. From what I gathered it was Marina Fonseka who took the child to be adopted as she had no children.

Q. By P21 both have adopted this child?

A. My father's name is also mentioned in the agreement. I heard the evidence of Nancy Charlotte, Evelyn Letitia and John Appuhamy.

Q. And you tell his Honour that Marina Fonseka was not the mistress of your father?

A. Yes, she was not kept by him to live as husband and wife. When my father came to Navinna and lived there for some time Marina Fonseka 40

did not accompany him. Maria Aponso did not accompany him. At that time Marina Fonseka had not gone to stay with my father. A certified copy of the deed of gift in my favour of the Melbourne House property has been produced. I do not know where the original is.

(Mr. Navaratnarajah states that the document marked in evidence is the original.)

(Shown R30) This is the original deed of gift.

10

(Mr. Navaratnarajah states that he will be producing certain other documents through a representative of Raymonds.)

Many people came to my father's funeral.

Q. The funeral arrangements were made by Austin Peiris? A. He said he will be making the arrangements in the Church.

20

Q. Who paid for the chairs? A. May be Mr. Austin Peiris paid for the chairs. Sand was strewn on the road. They were all attended to by Mr. Austin Peiris. It was not done at anybody's request. There was drapery on the road. That was also done by him. The permanent grave was not paid for by Austin Peiris. I paid for the permanent grave. Austin Peiris paid for the chairs and the organist.

Q. Will you kindly tell me again who paid for the grave? A. The cemetery had been acquired recently and my father paid for the surrounding wall.

30

Q. Did you pay for the grave? A. I do not think I paid for the grave. I think the grave was given free by the Society.

(Shown a receipt) I was not aware whether this was paid for I do not think I was asked to pay for the grave. I did not pay for the grave.

Q. Your earlier statement that you paid is not correct? A. I made a payment but I cannot say for what.

40

(Sir Lalitha moves to mark the document.  
Mr. Navaratnarajah objects.  
Sir Lalitha withdraws the document.)

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continued

After my father's funeral I returned to Colombo and went back about 3 weeks later. My husband had brothers and sisters. All of them attended my father's funeral.

Q. Is there a spring where people can bathe in Nawgala Estate? A. Yes. I have been to that spring to bathe.

Q. That spring is visible from the bungalow of Nawgala Estate? A. I think so.

Q. Actually you have to get down to get into that spring? A. Yes. 10

Q. You went for a bath one day? A. Whenever I go there I go for a bath when I feel like it.

Q. During that period Aloe Nona was the woman cooking in the kitchen? A. I cannot say. Before Aloe Nona was engaged to cook there I have been going and bathing. Aloe Nona was with my father as a cook for a short time.

Q. At the time you went from High Walton Estate after High Walton was bought Aloe Nona was the cook in the house at Nawgala? A. Yes. 20

Q. John Appuhamy was the driver of your father? A. Yes.

Q. John Appuhamy had been in the service of your father for a number of years? A. About 13 years.

Q. Who drove the car when you went from High Walton to Navagala? A. My driver.

Q. What was his name? A. Whom I usually call Banda. 30

Q. What do you call him unusually? A. I ordinarily call him driver Banda. I usually call him Banda. I heard the evidence of Aloe Nona with regard to an incident that took place at Nawgala Estate. I heard what John Appuhamy said.

Q. Did your driver Banda ever help you to get down the spring? A. Never.

Q. In fact he never went down to the place where the children were bathing? A. Only myself and my children went for the bath.

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Q. Does Banda sometimes bathe there after you have finished bathing? A. I do not know where he bathes. I have not seen him going down to have a bath there.

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Q. This incident referred to by Aloe Nona and John Appuhamy is entirely false? A. Yes.

Mrs. M.A.de  
Silva

10 Q. Did your father ever refer to this incident at all? A. No. Such an incident never happened and my father never referred to it.

Cross-  
examination  
continued

Q. Your father was there from 1940 onwards in Matale? A. I think he took up residence there in 1942.

20 Q. What do you want to think because you just said that soon after Evelyn Letitia eloped your father left for Matale? A. Yes, but he did not permanently reside from that time. He went to Matale and thereafter returned to Navinna and went back to Matale again.

Q. So that he resided at Matale till 1951? A. No. Nawgala Estate was sold in June 1952. Until that time he was a resident there.

Q. So that it is not true to say that he came down in 1951? A. He did not come down to live.

30 Q. Melbourne house property belonged to Mr. Choksy. My father bought the property from him. I cannot remember the exact date my father bought that property. Must be in October 1951.

Q. Was there an agreement for your father to buy that property before he actually bought it? A. Yes, and when he made a part payment.

Q. That was in the year 1951, November? A. Yes.

(Shown deed of sale No.491 of 22.11.51 P22)  
This is the purchase on a deed of agreement on

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Cross-  
examination  
continued

which he paid Rs.11,800 on 19.9.51. The purchase itself of the premises is for Rs.118,000.

Q. Was there any occasion on which you had a talk with your father under the portico in his house at Kaldemulla? A. Never. I heard John Appuhamy's evidence.

Q. It is untrue to say that he fetched you?  
A. Yes.

Q. And your father asked you to discontinue the driver Banda and that you declined; that is also untrue? A. Yes.

Q. The Village Headman of Kaldemulla gave evidence that on one occasion your father declined to go to your house; That is untrue?  
A. I am not aware.

Q. It is untrue to say that your father did not visit you after the middle of 1951? A. Yes.

(Sir Lalitha states that he wishes to question the witness about matters relating to her conduct after the death of the deceased, and wishes to know whether my ruling at page 168 that matters that occurred after the death of the deceased are irrelevant for the purposes of this inquiry will apply to such questions. He refers to Sec.11 of the Evidence Ord.

I inform Sir Lalitha that my ruling would apply).

Q. You definitely say that your father was permanently residing in Matale in 1951? A. Yes.

Q. It is incorrect to say that he had left Matale and come down to Kaldemulla to settle down in Kaldemulla definitely in 1951? A. Yes.

(Shown P22) In P22 it is described that William Fernando is of Kaldemulla Laxapathy Moratuwa. But he ordinarily gave his address as Kaldemulla Laxapathy for deeds.

Q. Your father has lots of moneys with him?  
A. Yes.

Q. He had a short time before his death sold High

10

20

30

Walton Estate? A. Yes.

(Mr. Navaratnarajah states that the last block of High Walton was sold in 1951, nearly 3 years earlier)

The last block was purchased I think by Mr. Vincent Corera. Before that he had been selling other blocks, block by block.

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Silva

Cross-  
examination  
continued

10

Q. Do you know whether some time before his death he contemplated purchasing a big estate worth several lakhs? A. Yes.

Q. According to the inventory filed by you in this case the money lying in the Bank of Ceylon to your father's credit was Rs.3,801/-? A. Yes.

Q. The actual amount of cash found when the safe was opened was only Rs.800/- odd? A. Yes.

20

Q. Shortly prior to your father's death the keys of this safe were in your hands? A. Yes.

Q. The deceased used to keep his documents and valuables in this safe? A. May be.

Q. Where was the last Will upon which you are asking for probate attested by Mr. Felix de Silva? A. When?

Q. Before your father died? A. It was with Mr. Felix de Silva.

Q. That was not in the safe? A. No.

30

Q. Were you aware that it was with Mr. Felix de Silva? A. Yes.

Q. There were certain deeds of title that were not in the safe? A. The deeds of lands which my father possessed at the time of his death were found in the almirah.

Q. The keys of that almirah were with you? A. Yes.

Q. So some of the documents were in an almirah

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Silva  
Cross-  
examination  
continued

and others in the safe? A. Yes. There were some pronotes in the iron safe.

Q. After the documents were brought to Court and left in the safe did you remove a deed without reference to the petitioner at all?

A. An agreement or something was taken out. I do not know the legal implications of it. Whether the lawyers were told or not I do not know.

Q. That is the agreement with Nancy Charlotte? 10

A. I do not know. The deceased had some property at Madampe and Eheliyagoda. Eheliyagoda was a rubber land.

Q. The deeds of these properties were not in the iron safe. A. They were in the almirah and I took them.

Q. I put it to you that the valuable documents were in the safe? A. By valuable documents I mean only the pro notes were in the safe.

Q. I put it to you that the last Will on which we ask for probate was also in the safe. 20

A. It was not there and I did not see a thing like that.

Q. I put it to you that you removed it and did away with it? A. No. It is wrong to say like that. I produce certain cheque counter-foils R27 to R29 of my father. I made reference to certain payments made to me by my father.

Q. Even when your husband was alive your father used to help you? A. Yes. 30

Q. In fact you have told His Honour that your father paid the house rent of your house when your husband was alive? A. Yes.

Q. You used to ask your father to help you? A. Yes, whenever I needed.

Q. You used to write to him? A. I have written to him as well as asked verbally. He got angry with Evelyn in 1940.

Q. You say he pardoned Evelyn only in September 1952? A. Yes, about that time. 40

Q. In between he has been paying moneys to Evelyn? A. I do not know whether he gave money to Evelyn. But gave money to his wife Nancy monthly.

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Q. Your father bought jewellery for Evelyn? A. After he bought the pearl set which was sometime after she eloped I do not know whether he bought any jewellery for her. The pearl jewellery set was bought.

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Cross-examination continued

10 Q. That was done when your father was angry with Evelyn? A. Yes.

Q. So that even if your father was angry with the daughter the father used to give presents or moneys? A. I do not know whether she was given presents.

(Mr. Navaratnarajah invites the attention of Court to the evidence at page 33 of the record on this point).

20 Q. It is quite possible that even if your father was angry with you in 1951 that he would have given you moneys if you asked for it?

A. (Mr. Navaratnarajah objects to the question. Sir Lalitha withdraws the question)

Q. Did you ask your father for moneys after 1951? A. Yes.

30 Q. And your father gave moneys? A. Yes. I went on a pilgrimage to Anuradhapura and Kataragama. I went to Kataragama. I went to Kataragama before my son went to England. He went to England in July 1954. I went to Kataragama about a month before July 1954. I went to Anuradhapura I think in 1951. I am a Christian. Banda is a Buddhist.

40 Q. Banda accompanied you when you went to Anuradhapura? A. Yes. The party went in my father's car as well as my car. My car was driven by Banda and my father's car was driven by his driver. The servants and Marina Fonseka also went.

Q. Apart from Banda and John Appuhamy all the

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Cross-  
examination  
continued

others were Christians? A. No. Marina Fonseka and the servants were Buddhists.

Q. You went with these Buddhists on a pilgrimage to Anuradhapura? A. In order to please the servants I accompanied them. It was a pleasure trip for me.

Q. The servants were Banda and John Appuhamy? A. Banda, John Appuhamy and there were 2 or 3 other servants of my father and Marina Fonseka. They went in my father's car at his request. 10

Q. Your father did not accompany you? A. He also expected to go with us. But he was medically advised not to go and he did not go.

Q. And to please the servants you went along for your pleasure as well? A. Yes. I went to make my servants happy. When I went to Kataragama my father was dead. I went only in my car to Kataragama. Banda drove the car to Kataragama. I went in my car and driver Banda drove it. 20

Q. How many days did you delay on that trip? A. One night.

Q. Where is Banda's home? A. I do not know, it is said to be beyond Baddegama.

Q. Isn't Banda's home in the Southern Province? A. Baddegama is in the Southern Province, but I do not know the distance from there to Kataragama.

Q. On the Kataragama trip did you go to Banda's house at all? A. I have never gone in that direction. 30

Q. Banda didn't go to his home on that occasion? A. No.

Q. Didn't take leave from you and go? A. No. My eldest child is Lala. Lala's godmother is my stepmother Nancy. My second child is Barn Jositha. She was born in 1937. Her godmother is Dulcie and others also. Lala was born in 1935.

Q. That is the wicked stepmother who didn't give 40

you to eat well, who didn't give you to dress well and who put off paying school fees to you: that is the wicked stepmother that you made godmother of your first child? A. Yes, I did not take those things into consideration. I got married and had my first child and I got her to be my child's godmother.

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continued

(Witness' evidence at the last two sentences at page 273 put to her)

10 Q. In other words she treated you like a wicked stepmother and you heartily reciprocated her feelings to you; and you answered, Yes?  
A. Yes.

Q. On the 20th a letter (P10) was sent through Sethan from Nancy Villa to Evelyn Letitia?  
A. Yes.

Q. I put it to you that this document P10 was not signed at the bottom by your father?  
A. I say it was signed by my father.

20 Q. You deny that it was written by your son Lala? A. He was not there at all. I heard the present headman giving evidence in Court.

Q. That evidence with regard to his finding out at the inquiry is untrue? A. Yes, what he has recorded in his book is not correct.

30 Q. I put it to you that you were anxious to put Evelyn off on that date when your father was taken to hospital? A. It was not my anxiety. My father did not want Evelyn. On the 22nd my father died and his corpse was brought home.

Q. In the father's Humber car?  
A. By Raymonds.

Q. The father's Humber car had gone to Colombo?  
A. At what time?

Q. Before your father's death? A. Yes.

Q. Evelyn had come to see the father after his death? A. Yes. Peiris came.



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examination  
continued

Q. Peiris and Evelyn went back to Moratuwa from Colombo in that Humber car? A. Yes, because they did not have another car. That car was driven by John Appuhany. I did not travel in the Humber car.

Q. If Peiris wanted to take the switch key of that Humber car he could have easily done that? A. No. They intended to take the car after going to the house.

Q. If he wanted to take the switch key at that time he could have taken it? A. I do not know. I do not know what his intentions were.

10

Q. That was on the 22nd? A. Yes.

Q. On the 23rd the funeral arrangements were being done? A. Yes.

Q. In the evening of the 23rd you did not leave Nancy Villa at all? A. No.

Q. In fact you stayed in Nancy Villa the whole of the 23rd during day and night? A. Yes.

Q. You did not go to the police station with Proctor Bertram Fernando on the 23rd? A. No.

20

Q. Did you make any complaint at the police station with Mr. Bertram Fernando on the 23rd? A. I did not go to the Police Station.

Q. Nor even before daybreak on the 24th? A. I did not go to the Police Station. On the 23rd night I sent word to Proctor Bertram Fernando. I also sent word to the Police to come.

30

Q. Did you together with Proctor Bertram Fernando cause a complaint to be made to the Mt. Lavinia Police? A. No.

Q. Actually you made a complaint at the police station on the next day, 24th and 10.45 a.m.? A. I did not make a complaint at the police station. I did not go to the Police station to make a complaint.

Q. You say the statement was made at Nancy Villa

on the 24th February at 10.45 a.m.? A. Yes.

Q. R33 is the first complaint of yours that was recorded by the police? A. On the 23rd although I made a complaint I think it was not recorded. On the 24th the Inspector Caldera recorded my statement.

Q. When did you make a statement to the police on the 23rd? A. I think it was 12 midnight. That is after the disturbance

10 Q. That is after Inspector Caldera came?  
A. Yes.

Q. He came in a van?  
A. I did not see how he came. After Inspector Caldera came I told my story.  
(Affidavit of Mr. Bertram Fernando filed in this case marked P23)

20 It is untrue to say "I in the company of the petitioner abovenamed caused a complaint to be made to the Mt. Lavinia Police of the facts set out above"? A. I cannot.

Q. You cannot say whether it is correct or not?  
A. I cannot say.

Q. It is not correct to say that he in the company of you caused a complaint to be made to the Mt. Lavinia police? A. Without knowing when Mr. Fernando caused a complaint to be made I cannot say whether it is correct or not.

30 Q. Anyhow as far as you know it isn't correct that you in the company of Proctor Betram Fernando caused a complaint to be made at the Mt. Lavinia Police? A. Without knowing the date I cannot answer the question.

Q. Did you sign any statement to the police before R33 of a complaint made by you? A. As far as I can remember, No.

Q. You heard Nancy Charlotte Fernando give evidence that she made a complaint at 6 a.m. on the 24th that the safe and the car had been forcibly removed by Inspector Caldera? A. Yes.

40 Q. This statement in R33 is at 10.45 on the 24th morning? A. Yes.

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continued

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Cross-  
examination  
continued

Q. You heard Nancy Catherine and Evelyn being cross-examined in Court on this incident?

A. Yes.

Q. Was one single question asked of Nancy Catherine that there were rowdies present at the funeral? A. I cannot say.

Q. Any such question from Evelyn? A. I cannot remember.

Q. Was any question asked from Nancy Catherine that she threatened to kill you? A. I cannot remember. 10

(R33 read out) I made that statement to the Police.

Q. You told the Court that Peiris went to bring some rowdies. How do you know he went to bring some rowdies? A. I heard some of Mr. Peiris' relations talking. He brought a lot of rowdies to the funeral place. They were there when the Police arrived.

Q. Did you point them out to the police? 20  
A. I did not. But I told them that there were rowdies present at the funeral.

Q. Did the police taken any action with regard to the rowdies? A. No. They took steps regarding the iron safe.

Q. Was any question asked of Nancy or Evelyn that you were prepared to give a car of your cousin for their use? A. I cannot remember.

Q. Do you know that the safe and the car were taken by the police to the Magistrate's Court? 30  
A. Yes.

Q. Do you know that no proceedings were taken in the Magistrate's Court Mt. Lavinia?  
A. I do not know.

Q. You know the date on which papers were filed by your Proctor in this case? A. I do not know. I entrusted the case to my lawyers. I do not know what steps were taken.

Re-examination

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P22 was shown to me. The address of my father is given as Kaldemulla in Moratuwa.

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(Shown R34) The Will is dated 13.5.50. The address of the deceased is given as Kaldemulla in Moratuwa. I was questioned about the statement made by the widow to the headman.

No.39

10 Q. When did you come to know that such a statement had been made by the widow? A. After it was produced in Court by the headman. The funeral of the deceased took place on the 24th. I returned to Colombo on the same day. In August, September or October 1952 my father pardoned Dulcie.

Mrs. M.A.de  
Silva  
Re-examination

Q. Prior to that what was the relationship between the deceased and Dulcie? A. They were angry.

20 (Shown R11) This is signed by my father. My father gave this document to me. I produce document R11.

Q. When was it given to you? was it before or after the Melbourne House was gifted to you? A. After. About 3 weeks after. I was given R11 when I went to see him.

(To Sir Lalitha with permission:

Q. This document R11 is undated?

A. Yes.

Sgd: V.Siva Supramaniam

A.D.J.

30 Further hearing on 3 and 17 March at 9.30a.m. and on 22 and 26 March 1956.

Sgd: .....

A.D.J.

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No.40

VICTOR DE SILVA

Respondent's  
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15908/T

3.3.56.

No.40

Trial resumed.

Victor de Silva  
Examination

Same appearances.

Errors in previous day's proceed-  
ings corrected, of consent.

Mr. Navaratnarajah calls:

Victor de Silva. Sworn. 52. Collector and  
General Clerk.

10

Messrs. A.F.Raymond & Co.

I have been summoned to produce certain  
correspondence between the deceased and Messrs.  
Raymond & Co. (Shown R37) This is a receipt  
signed by Messrs. A.F. Raymond & Co. acknowledg-  
ing receipt of a sum of Rs.2,550 to carry out  
the services in the sheets annexed to R37 which  
I produce marked R37a & b. R37 is dated 14.3.46.  
R37a & b. are also dated 14.3.46. In R37a & b  
the address of William Fernando is given. That  
is the deceased in this case. The address is  
Nancy Villa Kaldemulla, Moratuwa.

20

I also produce R38 letter sent by Messrs.  
Raymond & Co. to the deceased dated 22.7.52 by  
which Messrs. Raymond say that they are pleased  
to learn that William Fernando was in good  
health.

Cross-examined - Nil.

A.D.J.

30

M.D. SIMON PERERA

In the  
District Court  
of Colombo

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Respondent's  
Evidence

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No.41

M.D. Simon  
Perera

Examination

10 M.D.Simon Perera - 68. I was employed as Manager under the deceased. I am now employed under Mrs. Millie de Silva. Eheliyagoda. I took employment under the deceased in 1937. I was employed as his manager looking after his estates. I was first stationed at Eheliyagoda Estate, thereafter Nawgala Estate and Highwalton Estate were supervised by me.

The deceased went to live permanently at Nawgala Estate in 1941 or 1942. I know the raids on Colombo. It was before the Japanese raid on Colombo. He returned to live at Kaldemulla permanently in 1952, July.

Q. Was it before the sale of Nawgala Estate or after? A. After.

Q. Between 1942 and 1952 did Dulcie or her husband ever visit Nawgala Estate? A. Never.

20 Q. Did his wife ever visit Nawagala Estate?  
A. No.

Q. What was the relationship between the deceased and Dulcie during that period?  
A. He was very angry with her.

Q. With Dulcie's husband? A. With him as well.

Q. And with his wife? A. He was angry with his wife as well. He returned to live at Kaldemulla in July 1952.

30 Q. Did he tell you of any complaint he made to the police, after his arrival?

(Sir Lalitha objects to the question.)

Mr. Navaratnarajah states that he is leading up to the statement R13 made by the deceased in September 1952 against the widow and also against the petitioner. Petitioner's position in regard to R13 is that this statement was never made by the deceased and that it was a

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M.D. Simon  
Perera

Examination  
continued

fabrication. That statement is perfectly relevant in order to show the deceased's attitude towards the petitioner and her mother in 1952. Mr. Navaratnarajah states he is leading evidence to show that the deceased was not well disposed towards these people even in 1952. A statement made by the deceased is admissible.

Cites 10 CLW page 10

I allow the question.)

A. He did not make any complaint to me. 10  
He told me that he made a complaint to the Police against Nancy Fernando, his wife, and the daughter Dulcie in respect of their saying they will come to Nancy Villa forcibly. Sometime thereafter did you hear of a sum of money being paid by the deceased to Dulcie or Nancy?

A. I knew. The deceased told me one day that he will be giving Dulcie and Nancy a sum of Rs.20,000 in the names of the children to be utilised after they came of age. 20

Q. Did he tell you that the money was paid?

A. He gave the money.

Q. The deceased fell seriously ill in the early part of 1954? A. Yes.

Q. Did you come and stay with him? A. Yes.

Q. How long before his death?

A. About 4 days prior to his death.

(Shown P10) In whose writing is P10?

A. This is my writing.

Q. The entirety of it? 30

A. Yes. No. The lower portion was not written by me.

Q. The entirety of the top portion is yours?

A. Yes.

Q. Who ask you to write that?

A. S. William Fernando - on the 20th.

Q. Who gave the wording? A. The deceased.

Q. After you wrote that what did you do with it?

A. I gave it to the hands of the deceased. He signed it.

Q. And did he write anything else? A. Yes he wrote - "(Enda Epa Epa)" Don't come.

Q. The writing of the deceased is sidelined in red? A. Yes.

Q. Thereafter what happened to this document?

A. This was sent to Nancy Nona's house through Sethan a servant who was there.

10 Q. The deceased died on the 22nd? A. Yes.

Q. How old was he when he died? A. 82.

Q. And after his death under whom were you employed? A. Under the deceased's eldest daughter, Mrs. Millie Silva.

Q. Were you questioned by the headman regarding the document P10? A. No. The headman did not come to me.

Q. Did you go and meet the headman?

20 A. I was sent for by the headman and I went there.

Q. What did the headman ask you? A. He asked me whether a letter was sent to Dulcie Nona. I said, Yes. He asked me who wrote the letter. I told him I wrote the letter. He asked me at whose request. I told him that it was at the request of the deceased. I also told him that after writing the letter I gave it to the deceased's hands. I said I knew only that.

Q. Did he ask you to sign his book? A. Yes.

30 Q. Did you read the statement before you signed it? A. No.

Q. Did he read it out to you? A. No.

Q. On the day you made this statement under whom were you employed? A. Mrs. Millie Silva.

(Shown P19 - page 63 marked P17) This is my

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M.D. Simon  
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Examination  
continued



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M.D. Simon  
Perera  
Examination  
continued

signature. This letter was written on the  
20th.

Q. On the 20th evening he was removed to hospital?

A. Yes.

Q. He went by car? A. Yes.

Q. How did he get into the car from the house?

A. Walked up.

Q. Was he conscious or unconscious on the 20th?

A. He was fully conscious.

Q. Between his arrival in Kaldemulla to reside  
permanently and the 20th you have been frequently  
to Kaldemulla to see the deceased?

10

A. Once or twice a month.

Q. During that period how was the deceased dis-  
posed towards Dulcie? A. He was angry.

Q. Mr. Peiris? A. He was angry.

Q. To your knowledge did Mr. Peiris ever visit  
the deceased? A. No.

Cross-examined

Cross-  
examination

I am now employed under Mrs. Millie Silva.

20

My present salary is Rs.125/- per month. I re-  
ceive no other payments. I live on the estate  
at Eheliyagoda. Eheliyagoda Estate is a rubber  
estate 43½ acres in extent. I am in charge of  
that estate. I am described as the manager of  
that estate. I can read and write Sinhālese  
quite well. I keep accounts. I keep books.

Q. The labour department sometimes comes to your  
estate to examine your books on the estate?

A. No. Never to Eheliyagoda rubber estate. But  
once an Inspector came to Highwalton.  
Highwalton Estate accounts were kept by two of  
us. The labour Inspector came to Highwalton  
estate in 1951.

30

Q. The labour Inspector checked the accounts?

A. At the time the labour Inspector visited the

estate I was not there. The books were not inspected on the estate.

Q. The labour Inspector took the books away?

A. No.

Q. There were some wrong entries discovered by the labour Inspector? A. No.

Q. The labour Inspector did not find fault with the entries in the books?

10 A. At that time I was at Eheliyagoda. The Inspector went to Highwalton. Mr. Ratnayake who was at Highwalton at the time - it was Ratnayake who wrote the accounts - refused to give the books without me. The books were not given. Afterwards when I went to the estate the matter was reported to me.

Q. Then what happened to the books and what happened? A. I received a letter from the labour office asking that the books be produced at the office. I took the books to Kandy along with Ratnayake.

20

Q. And the books were found fault with by the labour Inspector? A. Yes.

Q. And actually there was a fine imposed on the estate? A. Yes.

Q. Rs.3,000? A. No. Rs.1,300.

Q. For wrong entries in the books kept on the estate, not by you of course? A. Yes.

Q. Those were with regard to check roll amounts?

30 A. Yes, for not entering half day's work for a Sunday. Ratnayake and I took the books to the labour office. From 1937 I was the manager of Highwalton, Nawgala and Eheliyagoda Rubber Estate. Now I live at Eheliyagoda. I have six children by my wife. My wife and 6 children are living in my house in the village.

Q. That is, in your brother's house?

A. No, in my house.

Q. Who is living with you in Eheliyagoda?

40 A. I have a boy to cook my meals. Nobody else lives with me.

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M.D. Simon  
Perera

Cross-  
examination  
continued

Q. No woman cooking for you in your house by any chance? A. Why do I want a woman? I have a boy. There is no woman cooking for me in my house.

Q. Do you know any person by name of Wasakutty?  
A. No.

Q. Do you know anybody else by that name?  
A. Not on our estate. But on other estates there are sweepers called Wasakutty. On Highwalton there was a Tamil man called Wasakutty. The books I took to the Inspector were books kept under my supervision. 10

Q. William Fernando got very annoyed with Dulcie because she eloped with Peiris? A. Yes.

Q. He got very angry with his wife also?  
A. Yes.

Q. Then he went and settled down on Nawgala?  
A. Yes.

Q. Marina Fonseka was living with him in the house? A. Yes. 20

Q. Actually the deceased got very angry with Nancy and left her? A. Yes.

Q. And then he lived with Marina Fonseka as his mistress? A. Yes. She was taken to look after him promising to give her Rs. 1,000 on a writing.

Q. And Marina Fonseka and the deceased lived as husband and Mistress? A. Not as husband and wife. She was taken to look after him.

Q. How many years did Marina Fonseka live on Nawgala Estate? A. About 12 years. 30

Q. And you used to go and look after the affairs of Nawgala Estate? A. Yes.

Q. And you say that Marina Fonseka was not the mistress of William Fernando during that period?  
A. No.

Q. She was merely looking after William Fernando?  
A. Yes.

Q. The deceased was on Nawgala Estate?  
 A. Did not remain on the Estate. He used to go there and come back. No. No. He lived on Nawgala Estate.

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Q. Do you know that he went to Navinna and stayed there for some time? A. Yes. He stayed at Navinna for about 6 months.

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 Evidence

Q. That was about the year 1945?  
 A. No. He went there about 1941 or 1942.

No.41

M.D. Simon  
 Perera

10 Q. When he went to stay in Navinna did Marina Fonseka accompany him or did she stay back at Nawgala?

Cross-  
 examination  
 continued

(Mr. Navaratnarajah states that the question assumed that Marina Fonseka commenced to look after the deceased prior to his staying at Navinna.

Sir Lalitha says there is evidence of Millie Silva on the record and he is going on that basis)

20 Q. Dulcie eloped with Peiris in 1940?  
 A. Yes.

Q. The deceased got angry with Dulcie and Nancy and went to Matalc? A. Yes.

Q. He stayed in Nawgala for about a year or two?  
 A. Yes.

Q. Then after about 2 years he came to Navinna for about 6 months? A. After staying there for a period less than 2 years he came to Navinna and stayed there for about 6 months.

30 Then again he went to Nawgala.

Q. When he came to Navinna did Marina Fonseka also come and stay with him? A. No.

Q. Marina Fonseka stayed over at Nawgala?  
 A. No, by that time he had not taken her.

Q. It was after he returned to Nawgala a second time that he took Marina Fonseka?  
 A. Then he took her.

Q. Did you know a woman by name Maria Aponsu?

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Perera

Cross-  
examination  
continued

A. I have heard of her. I do not know who the person is.

Q. You never saw Maria Aponsu at Nawgala?

A. No. I did not know anything about Maria Aponsu. I have about 40 years experience as manager of estates.

Q. If anybody wanted you to sign something would you sign it without reading it? A. No. But I signed this because it was not necessary for me to look into the details of it. Apart from that I did not have my pair of spectacles with me at the time to read. When I have my coat on I have my spectacles with me. The deceased stayed at Nawgala for a number of years.

10

Q. Thereafter he returned to Kaldemulla in 1951?

A. No. He came in 1952. He came in July 1952.

Q. You have a record that he came in July 1952 by any chance? A. Why, the estate was sold. I made a record of the day on which the estate was sold.

20

Q. On what date was the estate sold?

A. I do not remember the exact day. It was in the month of July. That date may be noted in a book which is on the estate.

Q. Do you know whether the deceased gave a set of jewellery to Dulcie? A. Yes.

Q. What was the year about? A. Must be in 1942 or 1943. I do not remember it exactly.

Q. You told us that the deceased told you that he made a complaint to the Police against Dulcie and Nancy? A. Yes.

30

Q. Was that at the time he had come to Navinna?

A. No. It was at Kaldemulla he told me.

Q. That is after he returned permanently to Kaldemulla? A. Yes.

Q. Was it after the sale of Nawgala?

A. Yes.

Q. When was the Rs.20,000 given to Dulcie?

A. Must be in 1953.

Q. Was that money given to Dulcie or Nancy?

A. I do not know to whom it was given. When I was asked who wrote PLO I said that I wrote it.

Q. Thereafter a question was asked whether you wrote the whole of PLO? A. Yes.

Q. Then you said first Yes. Then you said No?

A. I did not understand.

10 Q. Did you discuss this letter with Mrs. Millie Silva before you came into Court today? A. No.

Q. You never spoke to her about this letter at all? A. No.

Q. In fact until you gave evidence in Court this morning you did not tell anybody about your evidence with regard to this letter?

A. No.

Q. And this letter was put to you by your Counsel and therefore you gave the answer Yes and then No because you were confronted with this letter.

20 A. I said Yes for those portions which I have written.

Q. You said in evidence that the deceased had written "Enda Epa, Enda Epa"? A. I wrote this letter and gave it to the deceased to be signed. He signed it and gave it to me. He had written "Enda Epa Epa" which I saw only after the letter was given back after he signed it. The portion sidelined in red was not written by me. I have my correct glasses on now.

30 Q. Will you kindly read what is written there?

(Witness hesitates) A. I cannot understand this.

Q. Read the letter

A. (Witness reads "Meeta")

Q. You cannot read that? I cannot. "Meeta" is there. The other words I cannot read and then the words "Enda Epa". There is one word I cannot make out at all.

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M.D. Simon Perera

Cross-examination continued

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M.D. Simon  
Perera

Cross-  
examination  
continued

Q. Did the headman go to Nancy Villa to see you at all? A. No.

Q. The headman says that he went to see you at Nancy Villa. A. That is incorrect.

Q. Will you read aloud what is stated in the document P10 at page 63 which is marked P17?  
(Witness reads out)

It says "On this day at about 6.30 p.m. I went to meet Simon Perera who is now living in the house called Nancy Villa in order to inquire about the complaint made on 3.3.54. There I met the said person who stated thus "The letter that was written by me was to Dulcie Nona. That was written at the request of Mrs. Silva, her son Mr. Lala and Mr. Peiris, these three persons. That was not at the request of our master."

10

(Witness states: These are false). "At the time this letter was written our master was completely unconscious". This was read over and the signature obtained". I signed it and this is my signature.

20

(Sir Lalitha states that the present cross-examination is intended to satisfy the Court that the theory of interpolation of words is perfectly meaningless.)

Q. The earlier part of the statement says that the Headman went to meet you at Nancy Villa on this day at 6.30?

A. It is so written, but it is not correct. He says he went to meet manager Simon Perera.

30

Q. It does not say "Moona Gassimata Giyanatha"?  
A. No.

(Witness volunteers) There is a little scratching on the letter NAYANA in the word MOONA.

It is recorded that he met me, but that is not so.

Q. What follows is the statement alleged to be made by you?

A. Yes. The words "There I did not meet the

40

said person" are not here.

Q. This is the document that you have signed?

A. Yes. I did not read this before I signed.

Q. You signed it blindly?

A. It was not necessary for me to find out. I had stated the truth of what I had written. There was no wrong going to be done to me and I did not expect the headman to do a wrong to me. Therefore I signed.

10

Q. Has the Headman any grouse or grievance against you at all?

A. No. He had not spoken to me at all prior to that date.

Q. Have you signed other documents without reading what you have signed before this?

A. If it became necessary I would have signed without reading.

20

Before that also if there had been documents which I had to sign without reading, I signed them. After this I have not signed documents without reading them.

Q. Only before this you signed documents like this?

A. I do not say that before this I had signed any particular document without reading it. This document I signed without reading it.

Q. You have not signed documents before this document without reading it?

30

A. I cannot say.

Q. You have never signed documents after this document without reading it?

A. No.

Q. In other words this is the only document that you have signed without reading?

A. I cannot say that this is the only document that I signed without reading it. There may be other documents which I may have signed without reading. I do not remember.

40

Q. Can you tell us to the best of your

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examination  
continued



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Cross-  
examination  
continued

recollection of any document that you have signed?

A. I cannot. I have never been to the Police.

Q. In connexion with your duties as manager had you ever complained to the Police?

A. No.

Q. You have never made a complaint to a headman before?

A. I made a complaint to the headman about 15 years ago. I made a complaint to the Kiriporuwa Headman at Eheliyagoda in connexion with the theft of rubber latex.

10

On that occasion I signed the headman's book.

Q. Did you read over before you signed on that occasion?

A. I did not read.

Q. On that occasion also you trusted the headman?

A. Yes.

Q. Without reading? A. Yes. There was no other occasion on which I made a statement to the headman. These are the only two occasions on which I made statements to the headman. This case and the other one. I went to the house of the Headman of Kiriporuwa and made my statement.

20

Q. Did you take your spectacles on that occasion?

A. Yes. When ever I wear my coat my spectacles are also there in it. But whenever my coat is missing they are also missing.

30

When I made my complaint to the Kiriporuwa

headman I had my coat on and I had my spectacles.

Q. Nevertheless you did not use your glasses and read it before you signed it?

A. No. I trusted him.

Those were the only two occasions I made statements to the headman and I signed.

10 Q. On the occasion that Highwalton Estate was fined Rs.1,300 had you seen the books yourself?

A. No.

Q. Had you your coat on that occasion?

A. When I am on the estate I am sometimes without my coat.

Q. As Manager of the Estates do you look into the accounts kept by the local people?

A. Yes.

20 Q. Did you trust the man who kept the accounts at Highwalton?

A. Yes.

Q. And you did not therefore read those accounts?

A. Yes.

Re-examined

Re-examination: Highwalton Estate was fined

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Cross-  
examination  
continued

Re-examination

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Re-examination  
continued

Rs.1,300 in regard to the accounts kept by the estate. The fault found by the labour Department was in respect of the check rolls. No entries were made in the check rolls in regard to work done by labourers on Sundays. If a labourer works on Sunday he must be paid  $1\frac{1}{2}$  days wages. The labourers on the estate sent a petition alleging that they had not been paid for  $1\frac{1}{2}$  days wages for work on a Sunday. There was an inquiry by the labour Department into that and the check roll examined. The deceased paid that fine.

10

Rs.20,000 was paid to Nancy or Dulcie. I was not present at the time the payment was made.

Q. Who told you of it?

A. The deceased told me of this payment.

I was educated at Matugama Sinhalese School. I passed the 5th Standard when I was about 14 or 15 years of age. Thereafter I got employment on the estates. First of all Mr. Soysa who was known to me gave me some work on his Badugama Estate. I was about 40 years old when I took employment under the deceased. That was in 1937. (Shown P10) I was asked to read what was sidelined in red. I can read the first word in the first sentence and the last word "Enda". On the 2nd line is "Enda Epa Epa" and the third line "William". I do not know what is written on the 4th line. On the 5th line is written "20.2.54".

20

30

Sgd: V. Siva Supramaniam

A.D.J.

No. 42

A.H.F. CALDERA

3.3.56.

Mr. Navaratnarajah calls:-

A.H. FLAMER CALDERA - Sworn - A.S.P., Colombo East.In the  
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of ColomboRespondent's  
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A.H.F. Caldera.

Examination.

10 In February 1954 I was attached to the Mount Lavinia Police. I was the Inspector in charge of the Mount Lavinia Police. On the 23rd night/24th morning I went to Nancy Villa in Kaldemulla. There was a fairly large crowd of people present there and they looked rather boisterous. I went there because I received a message that there was likely to be a serious breach of the peace. On receipt of a message from S.I. Joachim I went there. When I went there I found about 200-300 people collected there. There was a corpse in the house. I went into the house and I found a Mrs. de Silva in a room. She said that the other people were creating trouble and wanted police assistance. She further

20 said that the car which belonged to the deceased was wanted by her step sister immediately for use and that she was not prepared to give it. I could not bring about a settlement and as such I took charge of the car, an iron safe and some other articles, namely, one bunch keys, one gold watch chain with one gold dollar, one gold sovereign, one gold half sovereign, one gold ring with yellowish stone, one gold ring with blue stone, one cheque book, one silver waist chain about 12 feet in

30 length. Mrs. de Silva is the respondent. She looked very excited and did not want to get out of the room in which she was. I met Mr. Peiris. I spoke to him. I cannot recollect exactly what he said. They were all claiming the car. I spoke to Evelyn Letitia the petitioner. Nancy Charlotte, the widow of the deceased, was there. I took the car and the safe at the instance of Mrs. de Silva. I went to the Police Station and made a record in the Information Book as to what transpired on that

40 occasion.

(Mr. Navaratnarajah marks a certified copy of it as R39)

(Witness reads R39) I produce R39a copy of the receipt given to Mrs. Silva and Mrs. Fernando. On

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A.H.F. Caldera.

Examination  
- continued.

Cross-  
examination.

the 24th morning I went to the house again. I questioned Mrs. William Fernando. She is in Court. (Witness points out the widow of the deceased). I questioned her in Sinhalese. I know Sinhalese very well. At the time she was making a statement Mr. Peiris was close to her. I recorded what she said. In the course of recording the statement Mr. Peiris did not want Mrs. Fernando to continue making the statement. He said he would consult his lawyers and then continue the statement. That is the statement R14. In R14 I have stated that Mr. Peiris, son-in-law of the deceased, wants to consult his lawyers and leaves the place. That is correct. Thereafter Mrs. Fernando did not want to continue the statement nor did she sign the statement. On the same day I recorded the statement of Mrs. Silva, which I produce R33. In R33 she made a request that police constables be sent to that house. Constables were there all along from the 23rd night. I took the view that the presence of constables was necessary. That is why I sent them.

10

20

Cross-examined.

Q. Was any complaint made to the Mount Lavinia Police by Proctor Bertram Fernando and Mrs. Millie Silva?

(Mr. Navaratnarajah objects to the question.

ORDER - I overrule the objection.)

A. There is nothing in the book in front of me. There are plenty of other books at the police station.

30

Q. With reference to this inquiry are statements written in any book other than the book before you?  
A. By whom? I was summoned to give evidence. I know what the dispute is about. I had to leave certain Police constables in this house. I took certain steps by removing certain articles from the house and producing them in the Magistrate's Court, Colombo South. After that I produced them in the District Court.

40

Q. Have you brought to Court statements made with regard to this dispute in the Mount Lavinia Police Station?  
A. I have not brought all the statements.

Q. Do you know whether any statements have been recorded in any book other than the book before you with regard to this dispute? A. I cannot say definitely without making reference to the books.

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Q. Did you make cross references in your Information Book when you made statements? A. Yes, there would be. This book contains my observations.

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10 Q. Does it contain any other statements with regard to this inquiry? A. No, except the notes of the other officers who happened to go there.

A.H.F. Caldera.

Cross-  
examination  
- continued.

(To Court: The statements of Mrs. Fernando and Mrs. Peiris are in this book. They are pasted on to the book.)

There are no cross references made in this book.

Q. It is customary in the entry of Information Book extracts to put cross references if there are any? A. Not in all cases.

Q. Generally it is so? A. Yes.

20 Q. You say you are not aware of any complaint made to the Mount Lavinia Police by Mrs. de Silva and Proctor Bertram Fernando? A. I cannot off-hand say. I cannot say personally. On this day upon some message I received, I went to Nancy Villa. I did not go with the Police van. I went myself in my car. I did not go in the company of any Police constables. I left the Police station at 3.05 a.m. on the 24th.

30 Q. When you got there Mrs. Silva pointed out that there were rowdies in the place? A. She said there were some undesirables in the premises but she did not point out. I was there from 3.30 till about 5 a.m.

Q. You say you were trying to settle a dispute with regard to a safe and a car? A. Yes.

40 Q. Was the question of the switch key of the car coming into the picture at all? A. The switch key was also mentioned because I took charge of that also. Mrs. Fernando was making a claim. After going there I came to know that she was the widow of the deceased.

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Cross-  
examination  
- continued.

Q. Did you at any time think that she was the mistress of the deceased? A. No. That did not strike me at that time. I did not know that the deceased was having a mistress. I was not aware of his private life. I had no occasion to enquire about it. In the course of my inquiry I did not come to know that Mr. Fernando had a mistress.

Q. It is not correct that you threatened Mrs. Fernando at all? A. I never did anything of the kind. 10

Q. It is not correct that you threatened Mr. Peiris at all? A. No.

Q. You did not threaten to take Mr. Peiris to the Police Station? A. No, I did not.

Q. Did you record any complaints from either Mrs. Silva or any one of them at the spot? A. Yes, about 10 o'clock in the morning.

Q. At that time? A. No. I left Nancy Villa about 5 a.m. Between 3-30 and 5 a.m. I was at Nancy Villa. 20

Q. It did not strike you to get any statement from either party? A. No. The people were all excited and therefore I did not think it was the time to record statements.

Q. Without recording a statement from either party you came to the conclusion that you should remove the safe and the car? A. Yes. I am not definite whether I put the safe into the van or into the car. This was a civil matter.

Q. But you thought that you should remove these two articles because you feared a breach of the peace? A. That is so. 30

Q. Was it not your duty to have recorded some statements of one or the other before you took that action? A. No, I do not think so. I stayed there at least  $1\frac{1}{2}$  hours. In the course of that  $1\frac{1}{2}$  hours, I did not think of getting any statement recorded from any one of the parties.

Q. Is there any requirement under any law of Police regulation requiring you to get a statement down? A. No. 40

Q. Do you know that Mrs. Fernando protested when you removed the safe and the car? A. She did not protest. She was agreeable to the car and the safe being removed. She was quite willing that it should be done. Mr. Peiris did not protest against it. Mrs. Silva did not ask me to remove it. She anticipated a serious breach of the peace and was agreeable to those two articles being removed. It was with the consent of all parties that I removed the car and the safe and the other articles to the Police Station. There was a waist chain also.

10

Q. It was tied round the waist of Simon Perera?  
A. I cannot say. I have no recollection. I have not made any record.

Q. Do you know that in the morning Mrs. Fernando had complained to the local headman that you had removed these articles? A. I am not aware. This is the first time I am hearing about it. I took the car and the safe on the 24th morning. I took them to the Magistrate's Court, Colombo South. I cannot remember the time. I have no record of it. I do not think I took it to Court. I did not send them to Court. I went and saw the Magistrate and got his instructions. Before I took the safe it was sealed with the seal of Mr. Peiris' people and Mrs. Silva's people. In the morning I first saw the Magistrate in chambers in regard to these two articles because I wanted to have them produced in Court. In reference to a civil matter and where I thought there would be a breach of the peace I saw the Magistrate to get instructions. The Magistrate asked me to produce it in the District Court. He said that I could not produce it before his Court and asked me to produce it before the District Court who is the competent authority. Thereafter at 10.45 I went to Nancy Villa. I got a statement first from Mrs. Fernando. I started off with the statement of Mrs. Fernando. After that I continued with the next statement.

30

40

(To Court:

I went to Nancy Villa after seeing the Magistrate.)

Mrs. Fernando did not sign that statement. The last sentence reads "I have no objection to the property being in police custody". Thereafter I got a statement from Mrs. Silva R33.

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Cross-  
examination  
- continued.



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Cross-  
examination  
- continued.

Q. The statement "My step-mother threatened to kill me, my son and the driver", do you recall at this point of time whether Mrs. Silva made that statement to you in the early hours of the morning when you were there for 1½ hours? A. When I actually went there she said she was threatened and that they would take her life. She said that the step-mother's people were threatening to kill her.

Q. "She also threatened to burn my father's car and my car"? A. I cannot remember whether she made that statement earlier. 10

Q. "They threatened to break the garage door and take the car"? A. That is what they actually said.

Q. "Mr. Peiris brought some rowdies"? A. She said earlier that there were some undesirables.

Q. There also occurs a sentence "I have no objection to the articles taken by the Police being in their custody"? A. Yes.

Q. In other words, both in R33 and R14 there are these two sentences "I have no objection to the property being in Police custody"? A. Yes. 20

Q. If a complaint was made to you by Mrs. Silva that someone threatened to kill her, her son and the driver, is that a serious complaint or not? A. Yes, depending on the circumstances.

Q. It did not strike you that it was necessary to copy down that statement? A. No, not at that moment.

Q. Why? A. Because the people were in such an excitement and there were undesirables and I thought there would be trouble. I am an Inspector of 18 years experience. 30

Q. You must have gone to hundreds of inquiries where there were breaches of the peace where there was consternation in the place? A. Yes.

Q. And you tell Court when such a serious complaint was made, a threat to kill one or two persons, you did not get a complaint down in writing because the people were excited? A. Yes, and I was going to leave the Police behind at the spot so that this could not have occurred. 40

Q. As a Police officer of responsibility a statement

made by a person of a serious threat to life is not one that you thought at the moment should be recorded by you? A. Yes, because I had left Police at the spot to see that the threat was not carried out.

Q. After the Magistrate refused to take any part in the disposal of the safe and the car you went back to Nancy Villa and then you thought it was time to get a statement recorded? A. Yes.

10 Q. Why pray? A. I wanted a statement from them in regard to the incident.

Q. Why did you want to get a statement down at 10.45 the next day when you did not want to take down a statement in the early hours of the morning? A. Because at that time they would have been excited to make a statement.

Q. After 10.45 the next day their excitement would be over and you would be able to get a statement? A. Yes.

20 Q. If they were not excited in the early hours of the morning you would have got down their statements? A. Yes.

Q. Because they were so excited you did not take the statements? A. Yes, and there was no time. It was because they were quarrelling over this property and I thought sooner I took the articles away the better. Moreover, there was no time. I thought it wasting time and therefore I did not take down the statement.

30 Q. There were three things; there was an excitement? A. Yes.

Q. You thought you would be wasting time? A. Yes.

Q. The third was that you wanted to take the things away because there was no time? A. Yes. I was there for 1½ hours. There was S.I. Joachim. There were six or seven police constables. I do not recollect a proctor being there.

40 Q. A statement is seriously made about threat to life, during the 1½ hours you could not get down a statement in writing? A. It was not so easy. There was excitement. There was shouting and fighting. They were just arguing and making a terrific noise in a funeral house.

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Cross-  
examination  
- continued.

Q. Why is it if a statement was not necessary to take down contemporaneously, you thought it necessary to take it down at 10.45 the next morning?

A. Subsequently I went and inquired and recorded the statements. I wanted to complete the inquiry. I wanted to complete the inquiry. The inquiry was as regarding these articles.

Q. When did the inquiry regarding the articles begin? A. When I first went there at 3.30.

Q. So you wanted to complete an inquiry regarding the articles at 10.45 the same day? A. Yes.

10

Q. You had not got anything written during those 1½ hours? A. Yes.

Q. You went to the office and made certain observations? A. Yes. The observations are in my handwriting. There is a record in R39 that at the house I searched the almirah and the table drawer pointed out by Mrs. Fernando and Dulcie Peiris for valuables and deeds but nothing was found. There were no deeds found in the almirah at all. That is correct.

20

Q. I put it to you that it was after you found that the Magistrate's Court was not going to make any order with regard to these productions that you decided to get statements from these two persons?

A. No.

Re-examination: Nil.

Sgd. V. Siva Supramaniam.  
A.D.J.

No. 43

No. 43

30

V.C.S. Perera.

V.C.S. PERERA

Examination.

V.C.S. PERERA - Sworn. Clerk, Bank of Ceylon (City Office) Colombo.

We have been summoned to produce cheques drawn by the deceased and paid by the Bank. I produce R40 cheque dated 30.4.51 bearing No.X.688977. This is signed by S. William Fernando and paid by the bank on 4.5.51. I produce R41 cheque X.688978 dated 30.4.51. It is signed by the deceased and paid by

the bank on 4.5.51. I produce R42 cheque No.688979 dated 30.4.51. It has been paid on 3.5.51. I produce R43 cheque X.688986 dated 5.6.51 signed by the deceased and paid by the bank on 12.6.51. We were asked to produce a cheque dated 17.10.52. I produce it marked R44, No.G.356201. It is signed by William Fernando and paid by the bank on 20.10.52.

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Evidence

No. 43.

V.C.S.Perera.

Examination  
- continued.

Cross-  
examination.

Cross-examined.

10 Some cheques of William Fernando have been returned. I have a record of it. They are cheque No.342023 dated 11.4.50 for Rs.9000/-. It is not given in whose favour it is. It has been returned for the reason that the signature differs. The next one is cheque No.342032 dated 14.4.50 for Rs.9000/-. It has been returned because the signature differs. The next one is 342048 of 17.7.50 for Rs.105/-. The remark is "alteration of amount". The next one is 342054 dated 31.7.50 for Rs.105/-. The remark is "endorsement irregular". The next  
20 cheque is X.688981 dated 10.5.51 for Rs.50/-. The remark is "payment stopped". The next one is cheque X.688993 dated 27.6.51 for Rs.5 0/-. The remark is "signature differs". That is all on my list.

Re-examination: Nil.

Sgd. V. Siva Supramaniam  
A.D.J.

No. 44

No. 44

MRS. A.V.P. JOSEPH

Mrs. A.V.P.  
Joseph.

30 MRS. A.V.P. JOSEPH - Sworn. Proctor S.C. & N.P.,  
Colombo.

Examination.

(Shown R45 affidavit dated 14.9.51 filed in Case 1466/T of this Court). This affidavit has been signed before me. It has been witnessed by Mr. Vethecan. (Shown original of last will 1984) I have signed this document and Mr. C.V. Vethecan has signed this. Mr. Vethecan was a Proctor of this Court. I cannot say whether he died in 1951 or 1952.

40 (Mr. Navaratnarajah marks a certified copy of the Last Will referred to as R46)

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Mrs. A.V.P.  
Joseph.

Cross-  
examination.

Re-examination.

Cross-examined.

(Shown R46) Proctor for Vethecan had signed his signature first at page 3 and scored it off and signed it again. Proctor Vethecan's signature appears again in the same document R46 in the attestation clause.

Re-examined.

(Shown R45) This is an affidavit. The signature of Mr. Vethecan to that affidavit was obtained on 14.9.51. R46 is the original Will. Mr. Vethecan has signed this Will as a witness. His signature as witness to the Will appears at page 3. The date of the Will is 21.12.48.

Q. The signature at Page 3 was put in there on 21.12.48. The signature on the 4th page is a signature that was put down by Mr. Vethecan on 14.9.51. The signature appearing in R45 and the 4th page of R46 were put down in my presence. The signature appearing in page 3 was not put down in my presence.

Sgd. V. Siva Supramaniam.  
A.D.J.

10

20

No. 45

D. Muthukrishna.

Examination.

No. 45

D. MUTHUKRISHNA

DINKAR MUTHUKRISHNA - Sworn. Examiner of Questioned Documents. Colombo.

I am an Examiner of Questioned Documents. My father was also an Examiner of Questioned Documents for a number of years. I worked under my father. I have given evidence in a number of cases in regard to questioned documents, in about 50 or 60 cases in Colombo and in other Courts of the Island. I first gave evidence as a handwriting expert about 1950 and between the years 1950 and 1956 I have given evidence in 50 or 60 cases as a handwriting expert.

I produce R46a the enlarged photograph of the signature appearing at page 4 of R46a of C.V. Vethecan. I produce R45a the enlarged photograph of the signature of C.V. Vethecan appearing at page 2 of R45. I also produce marked R47 the enlarged

30

10 photograph of the signature of Mr. C.V. Vethecan appearing at page 2 of P11. I produce R40a, R41a and R42a the enlarged photographs of the signatures of the deceased appearing in the cheques R40, R41, and R42 dated 30.4.51. I produce R44a the enlarged photograph of the signature of the deceased appearing in cheque R44. R43a is the enlarged photograph of the signature of the deceased appearing in the cheque dated 5.6.51. I produce R48 the enlarged  
 20 photograph of the signature appearing at page 2 alleged to be of Sellaperumage William Fernando. R47 is the enlarged photograph of the alleged signature of C.V. Vethecan appearing at page 2 of P11. I compared that signature with the two signatures appearing in page 2 of R45 and page 4 of R46. The enlarged photographs of those two signatures are R45a and R46a. The two signatures which appear at page 2 of R45 and page 4 of R46, the photographs of which are R45a and R46a, have been written by  
 20 one and the same person.

Q. Tell us whether the person who wrote C. V. Vethecan at page 2 of P11, a photograph of which is R47, is the same person who wrote the signature C.V. Vethecan which appears at page 2 of R45 and the signature C.V. Vethecan which appears at page 4 of R46? A. No. The two standard signatures show an aged writing whereas the disputed signature shows a much firmer hand. The capital letter "C" in the two standard signatures ends with a downward tick which is absent in the disputed signature. I produce R49 which contains a drawing of the letter "C" appearing in R46a and R45a which is on the right hand side and the letter "C" appearing in R47 which is on the left hand side. The full stop after the capital letter "C" in the standards is placed on the right of the letter whereas in the disputed signature it is underneath. R50 contains the letter "C" and the dot appearing in R45a and 46a and also the letter "C" and the dot which appear  
 30 in R47. The letter "C" and the dot appearing in R47 are on the left hand side and the letter "C" with the dot appearing in R45a and R46a are on the  
 40 right hand side.

The capital letter "V" in the disputed Will signature ends in an outward open tick which is entirely absent in the standards. I produce R51 the letter "V" which appears in R45a, R46a and R47. The letter "V" appearing in R45a and R46a is on the right hand side and the letter "V" appearing in R47

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is on the left hand side. In the same letter it will be observed that the ending part of the capital letter is made up of a fresh piece of writing in the disputed Will signature. The person who wrote the letter "V" had stopped. It is not a continuous piece of writing. It is a fresh piece of writing. It is composed of a fresh piece of writing. There is a penlift there.

The down stroke of the simple letter "T" is formed with a separate movement in the standards whereas in the Will signature it is formed with a continuous movement from the preceding letter "E". I produce R52 which contains the letter "E" and "T" appearing in R45a, R46a and R47. The letter "E" and "T" appearing in R47 appears on the left hand side and the letter "E" and "T" in R45a and 46a is on the right hand side. The "E" is continued to form the downwards stroke of letter "T" whereas it is disjoined in the other.

10

The cross-bar of the letter "T" in the standards is used to form the downward stroke of the following letter "H" whereas in the Will signature the cross-bar stands out independently. I produce R53 the letters "TH" appearing in R45a, R46a and R47. The letters "TH" which appear in R47 are on the right hand side and "TH" appearing in R45a and R46a on the left hand side.

20

The simple letter "C" in the standard signature is formed more or less like an "E" whereas in the disputed signature it is formed in the customary style. I produce R54 the letter "C" which appears in R45a, R46a and R47. The letter "C" which appears in R47 is on the left hand side and the letter "C" which appears in R45a and R46a is on the right hand side.

30

The ending point of the disputed signature is smooth in comparison to the congested end seen in the standards. I produce R55 the ending stroke of the signature appearing in R45a, R46a and R47. The ending stroke which appears in R47 is on the left hand side and the ending stroke appearing in R45a and R46a is on the right hand side.

40

The cross-bar of the letter "T" in the disputed signature extends right up to the end over the letter "C" whereas such a situation does not arise in the standard signatures.

The standard signatures show a hesitant hand which lacks muscular control whereas the disputed signature shows a smooth flowing fist.

(Further Hearing on 17.3.56)

Sgd. V. Siva Supramaniam  
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D.Muthukrishna.

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- continued.

10

(Mr. Navaratnarajah moves for summons on witness P.C.1341 Gurupatham who recorded the statement of the deceased on 8.9.52. The statement was marked at page 80 as R13. Mr. Navaratnarajah states that he had not put down the name of the Police Constable in the list filed by him before the inquiry commenced but had summoned the Inspector of Police to produce the statement.

Sir Lalitha states that he has no objection.

Issue summons on the witness for 17.3.56.

Intd.

A.D.J.

17.3.56.

20

Appearances as before.

Sir Lalitha objects to R49, R50, R51, R52, R53, R54 and R55 which have been produced on the ground that these contain certain drawings, not photographs, made by the witness with certain observations which are not proper. He states that the documents were marked near the witness box and he did not know what documents were being marked.

ORDER

30

Sir Lalitha states that when the documents in question were produced he was not aware of the nature of the documents and did not object to them at that stage. The documents are enlarged drawings by the witness of certain parts of the signature and are intended to elucidate his evidence on those points. The observations contained thereon are also observations made by the witness himself and he can testify to that fact in the course of his evidence. I see no reason to reject the documents. I overrule the objection.

40

Sgd. V. Siva Supramaniam  
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Sir Lalitha asks that R47 and R49 be initialled by me. I initial them.



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- continued.

Mr. Navaratnarajah asks that all the photographs and drawings be initialled by me. I initial the drawings and photographs that have been marked in evidence.

D. Muthukrishna - Recalled - Sworn.

Examination-in-chief continued:

(Shown R49) This is a drawing made by me. There appears certain writing in green ink. That is in my writing. That is my view. There are the words "disputed" and "admitted", in green ink. It is in my handwriting. 10

(Shown R50) There are the words "disputed" and "admitted". They are in my writing. There are two letters "C" in blue and red pencils. I did that drawing. There is a writing in green ink. It is my writing. That is my view.

(Shown R51) The words "disputed" and "admitted" in green ink are in my handwriting. The two letters "V" in blue and red pencils were drawn by me. The writing in green ink is in my writing. That is my view. 20

(Shown R54) The two words "disputed" and "admitted" are in my writing. The two letters in blue and red pencils are drawn by me. The writing in green ink is my writing. That is my view.

(Shown R55) The words "disputed" and "admitted" are in my writing. The two drawings in blue and red are my drawings. The writing in green ink is in my writing. That is my view.

(Shown R52) The words "disputed" and "admitted" are in my writing. The two drawings in blue are my drawings. The writing in green ink is in my writing. That is my view. 30

(Shown R53) The words "admitted" and "disputed" are in my writing. The two drawings in blue and red are my drawings. The writing in green ink is in my writing. That is my view.

(Shown R46 - page 3 - bottom left hand corner of the original R46) The words "C. Vethecan" are cut off. Below that there is "C. Vethecan". In regard to the formation of the letters "TH", the "H" is formed with cross bar of the letter "T" in the same manner as R46a. 40

Q. In R47, the alleged signature of C. Vethecan in the Will, how is the "H" formed? A. The cross bar is an independent stroke and does not go to form the downstroke of the letter "H".

That is one point I made in R53.

(Evidence of Mr. Tudugala at page put to witness). (The evidence is that Mr. Vethecan "signed with difficulty. He was nervous. By nervous I mean that when he signed he shivered. He signed letter by letter"). (Shown protocol P11)

10 Q. Does that signature appear to have been signed with difficulty? A. No,

Q. Does it appear that it was the signature of a nervous person? A. No.

20 Q. Does it appear that it was signed letter by letter? A. The remark read out earlier would be more appropriate to the standard signatures which appear in R46 and R45. In regard to Mr. Vethecan's signature I have only had two standard signatures to compare with. Those two standard signatures were written at one and the same time.

30 (Shown page 438 of Contested documents and Forgeries by E. Brewester) That is so. In this case I have had only the benefit of two signatures. The two standard signatures show a tremor of age. That tremor of age is not shown in the disputed signature. The signature appearing in P11 at page 2, which is alleged to be that of Sellaperumage William Fernando, was compared with five signatures of William S. Fernando which appear on cheques made by him. Those five cheques are R40, R41 and R42 all dated 30.4.51, R43 dated 5.6.51, R44 dated 17.10.52.

Q. Is it correct to say that the best possible standard specimen signatures were obtained in this case? A. Yes. The signatures of W.S.Fernando appearing in R40, R41, R42, R43 and R44 have all been written by one and the same person.

40 Q. Do you say that the alleged signature of Sellaperumage William Fernando appearing at page 2 of P11 has been written by the same person who wrote William S. Fernando on R40, R41, R42, R43 and R44? A. No.

Q. Will you give your reasons? A. If the "CS "

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(5th letter in the disputed signature) in the standard signatures are examined it will be observed that it ends in the normal customary manner in the standard signatures. In the disputed signatures it merely ends inwards. In R40 the "cS" ends in the customary manner with a hook or curve outwards. Similarly in R41, R42, R43 and R44. But in the disputed signature the contrary movement is observed.

I produce R56 a drawing.

(Sir Lalitha objects to the drawing being produced. 10

ORDER -- I overrule the objection.)

In R56 there is a drawing in blue and red pencils of the letter "S". They are my drawings. The "S" on the left hand side is the one that appears in the disputed signature. The letter "S" which appears on the right hand side is the one which appears in the admitted documents R40-R44. R56 contains a writing in green ink. It is my writing. This is my view. 20

The ispilla on "S" in the disputed signature (3rd letter) is constructed at an angle which is inhabitual in the standard. In the disputed signature the angle is more or less parallel to the base whereas in the admitted signature it is more or less parallel to the up stroke.

I produce R57 the drawing of the letter "S". The drawings were made by me. On the left hand side appears the letter "S" which appears in the disputed signature. On the right hand side is the letter "S" which appears in the admitted signatures R40-R44. 30

(Sir Lalitha objects to the drawings being produced.

ORDER - I overrule the objection.)

These drawings were made by me in order to illustrate to Court the points I am making. You can do that or follow the blackboard method. R57 contains a writing in green ink. That is my view.

The commencing and terminal heads of the letter "S" (7th letter in the disputed signature is further apart than in the standard signature whereas in the standards they are very much closer to each other. 40

I produce R58 the drawings of the letter " 2s " .

(Sir Lalitha objects to the drawings being produced.

ORDER - I overrule the objection.)

On the left hand side is the " 2s " which appears in the disputed signature. On the right hand side is " 2s " which appears in the standard signatures R40-R44. There is also a writing in green ink. That is in my writing. That is my view.

10

The papilla of the last letter " 2 " as seen in the standards show a bold squarish movement quite contrary to the angular movement seen in the disputed signature.

I produce R59 drawings of the letter " 2 " in the blue and red. Those drawings are made by me.

(Sir Lalitha objects to the production of the drawings.

ORDER - I overrule the objections.)

20

On the left hand side is the " 2 " appearing in the disputed signature. On the right hand side is the " 2 " appearing in the admitted signatures R40-R44. R59 also contains a writing in green ink. That is in my writing. That is my view.

The vowel stroke attached to the 7th letter has in the disputed signature a commencing tick which is not repeated in any of the standard signatures. If it has a tick at all it is at the bottom of the letter.

I produce R60 the drawings of the letter " 2s " .

30

(Sir Lalitha objects to the production of the drawings.

ORDER - I overrule the objection.)

On the left hand side is the " 2s " appearing in the disputed signature and on the right hand side is the " 2s " appearing in the standard signatures. It also contains a writing in green ink which is in my writing. That is my view.

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- continued.

The commencing stroke of the first letter "n" in the standard is usually from up downwards whereas a weak movement is seen in the disputed signature.

(Shown R61) This contains the letter "n" made by me. On the left hand side is the "n" appearing in the disputed signature and on the right hand side is the drawing of the admitted signatures.

(Sir Lalitha objects to the production of the drawings.

10

ORDER - I overrule the objection.)

The writing in green ink is in my writing. That is my view.

In the 7th letter "3" it will be noticed that in the disputed signature the commencing stroke is a line whereas in all admitted signatures it is a bulb formation.

I produce R62 the drawings of the letter "3". On the left hand side is the "3" appearing in the disputed signature and on the right hand side is the "3" appearing in the admitted signatures R40-R44.

20

(Sir Lalitha objects to the production of the drawings.

ORDER - I overrule the objection.)

Those drawings were made by me. R62 contains a writing in green ink which is in my writing. That is my view.

(Shown R9a) This is the photograph of the signature of Sellaperumage William Fernando appearing in R49, which is a Last Will dated 1.2.40.

30

(Shown R34a) That is the photograph of the signature of Sellaperumage William Fernando. R34 is Last Will 454 dated 13.5.50.


(Shown R63) This is the photograph of the signature of S.W. Fernando appearing in a proxy dated 24.5.44.


(Sir Lalitha admits that the signature on R63 is the signature of the deceased.)


(Shown R64) This is the photograph of the signature of S.W. Fernando on a proxy dated 1.9.48.



(Sir Lalitha admits that the signature on R64 is the signature of the deceased.)


R63 and R64 are the photographs of the signatures of S.W. Fernando appearing in proxies in Case 15555/M of this Court.

10 In the standards R40-R44 the ispillia over the "  " ends parallel to the up stroke. That same feature is shown in R9a, R63, R64 and R34a.

I said in R40-R44 the commencing and terminal heads of "  " in the standards, if carefully examined, is found to be much closer to each other than the distance shown in the disputed signature. It is the same in R9a, R63, R64 and R34a.

20 I said that the papilla of the last letter "  " in R40-R44 show a bold squarish movement which in the disputed signature is found to be restricted in movement. It is the same in R9a, R63, R64 and R34a.

I said that the vowel stroke under the "  " in the standard signature exhibits either a slight ending curve or inward tick but no commencing tick as seen in the Will signature. In R9a, R63, R64 and R34a it is correct that the vowel stroke under the "  " exhibits either a slight ending curve or inward tick but no commencing tick.

30 I said in the standard signatures R40-R44 the bulb formation of the letter "  " stands against the line formation seen in the disputed signature. R9a, R63, R64 and R34a have the same bulb formation.

For the reasons I have given I am of the view that the signature of Sellaperumage William Fernando appearing in P11 is not the writing of the person who wrote S.W. Fernando in R40-R44 and also R9a, R63, R64 and R34a.

40 Q. Do you agree with the passage in Osborne on Questioned Documents at page 267 (2nd Edition):  
"The writing to be examined should first be suitably enlarged and a sufficient good clear prints made ... in explaining a particular point it may be helpful

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to use a large board on which the characters are drawn as the testimony is given with designating numbers or letters indicating the particular points in discussion"? A. I agree with that. This is a recognised book on handwriting on questioned documents. In regard to Mr. C. Vethecan's signature I said that the two standard signatures show an aged writing. In that connection I refer to page 56 of the book Contested Documents and Forgeries by Brucetor which deals with the tremor of old age.

10

Cross-examined.

I am 31 years old. The photograph relating to Mr. C. Vethecan's signature were taken by a professional photographer. He is professionally a portrait photographer but he has had experience of taking document photographs. I selected the photographer.

Q. Did he make these photographs upon any particular instructions given by you? A. With regard to size and any mathematical enlargement no particular instructions were given. With regard to other matters I gave instructions. I said I wanted it fairly large so that the court and Counsel could follow my reasons. These photographs are not to any particular scale.

20

Q. As a matter of fact, the photograph of the impugned document R47 is of a very much larger scale than the two standard signatures R45a and R46a? A. I got 1 or 2 made of a larger scale but there are 1 or 2 of the smaller scale. R47 is a more magnified photograph than R45a and R46a.

30

Q. The standards were they selected by you or were they given to you by somebody? A. They were given to me by the proctor in the case.

Q. The Proctor gave you only two standard signatures? A. Yes.

Q. It is not that you were given a large number of standards and you selected only two? A. No.

Q. Looking at the two standard signatures in R45a and R46a and comparing that with the impugned signature on R47 even a layman will be able to say or would say that the standard signatures do not correspond to the impugned one? A. Yes.

40

Q. Even a child could see the difference between the two standard signatures and the impugned signature? A. Yes.

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Q. Did it ever strike you to ask for any more standards than the two that were given to you? A. I asked for more standards but at that time they were not available but subsequently I did examine further standards.

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10 Q. Subsequently means subsequent to the last date of trial? A. Yes.

D.Muthukrishna.

Q. It did not strike you to ask for more standards before the last date of trial? A. I had asked for standards.

Cross-examination - continued.

Q. But they were not made available to you? A. No.

Q. How many times did you ask the proctor on your side and when did you ask the proctor? A. On the occasion when I met him.

Q. About how many? A. Approximately about twice.

20 Q. And how many days before the last date of trial? A. Must have been about 4 or 5 months.

Q. Not more than two standards were given to you? A. I was told that none was available at that time.

I knew that this was Proctor Vethecan. I did not know Proctor Vethecan at all by any chance.

Q. These two signatures on the standards R45a and R46a have been described by you as being of a person with an infirm hand signing with a tremor?

30 A. I would put it this way: of a person who had lost part of his muscular control.

Q. And in contra-distinction to that the document R47 is of a person who appears to have muscular control, written with a firm hand? A. Yes.

Q. It never struck you that two standards alone were not sufficient for you to express an opinion? A. In some cases one standard alone is sufficient.

Q. Osborne also says that in the normality of cases the standards should be between 5 and 10?



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- continued.

A. Yes, and he also says in some cases one standard would be sufficient.

Q. That is if the standards are available to you?

A. Yes. Q. You were asked 'is the person who wrote the two standard signatures the same person who wrote the impugned one' and your answer was 'No'?

A. Yes.

Q. That is a little pontifical, isn't that so?

As an expert in handwriting you undertake to look at two standards which appear to be of a person who has lost muscular control and you compare with the impugned one of a firm hand and you say the signature appearing in the impugned one is not signed by the person who signed the other? A. That was my opinion.

10

Q. Did it ever strike you that there could be at this time some signatures of Mr. Vethecan in a firmer hand? A. It struck me on looking at these two signatures R45a and R46a that it was obvious that this person had lost his muscular control and the problem of his having signed with a firm hand did not arise. If there were signatures of Mr. Vethecan in a firm hand my opinion would have been a little revised.

20

(Shown P24 - photographs of certain signatures of Mr. Vethecan in 1949, 1950 and 1951) (Allowed subject to proof).

Q. Is the signature V19 appearing on the right hand side a firm signature? A. Fairly firm.

V20 is fairly firm. V21 is fairly firm. V22 is not firm. V18 is not firm. It is not as firm as V19. V17 is not firm. V16 is not as firm as V19. V13 is not as firm as V19, but it is fairly firm. V12 is fairly firm. V6 is not firm. V7 is not firm. V10 is fairly firm. V8 is not firm. V9 is not fairly firm. V2 is not firm.

30

Q. You notice that in the year 1949 if you take V2, V3, V4, V5, V6, V7 there appears to be an infirmity? A. Yes.

Q. In 1950 you get V8, V9, V10, V11, V12, V13 which contain fairly firm signatures? A. Yes.

40

Q. In late 1950 and early 1951 V14, V15, V16, V17,

V18 the majority are fairly firm but there are one or two not so firm? A. Yes.

Q. In 1951 V19, V20, V21, V22 you get some which are very firm? A. Yes.

Q. When the photograph R46 was taken by a gentleman who you said had some experience in document photography, his experience was so great that a part of his thumb also has come on the photograph?

10 A. Why should that detract from his capacity to photograph.

(Shown P7) I am not in a position to read it.

(To Court: It is in flowing script in Sinhalese.)

I am not able to read flowing script in Sinhalese.

(Shown document P25) I cannot read the first sentence in the passage sidelined in blue. (Sinhalese Editorial in the Lankadeepa)

20 I gave evidence in a Jaffna Court Case, in a Chavakachcheri case. That is only last year. That was a case in which I was asked to express my opinion as to whether a promissory note was a forgery or was genuine. I was provided with two signatures of admitted documents. I was asked to say whether the impugned one was a forgery or not. I said in Court it was a forgery.

Q. That was a case in which the question was whether one Carthigesu had signed a promissory note? A. Yes.

Q. You were asked in that case whether you could read Tamil letters? A. Yes.

30 Q. You said you were not able to read what was shown to you? A. Yes. In that case I produced certain photographs and enlargements. I gave evidence with regard to the formation of the Tamil letter 'IR' (R) in Carthigesu. My opinion was that the formation of the letters differs.

Q. Did you say this in that case D.C.Chavakachcheri 612: "There is a difference of the letter 'IR'?"

(Witness is asked to leave Court.)

40 Mr. Navaratnarajah objects to the question. He says the witness might be asked whether his evidence was accepted or not.

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ORDER - I allow the question to be put.  
Witness is recalled.)

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A. I cannot recall the details of the evidence I gave.

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Q. You referred to a loop? A. If it is there it is correct. I cannot recall it personally.

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examination  
- continued.

Q. You referred to the final ending of a letter being vertical and the other being horizontal?  
A. If it is there it is so.

(Mr. Navaratnarajah objects.

10

ORDER - I overrule the objection.)

Q. Did you say this: "In Pl the letter 'ith' in the name Carthigesu differs in formation from the 'ith' in the standard signature as the final ending is vertical in Pl and horizontal in the standard signature? A. I cannot remember the wording or the reason, but if it is there it is correct.

Q. You referred to the fact that in Carthigesu two letters had been joined in one and separated in the other? A. Probably.

20

Q. You referred to the fact that the last letter in Carthigesu had a loop in the ending and in the other no form? A. Probably.

Q. And you said that the impugned signature was of a man well versed in Tamil whereas the other person was not a person who was well versed in Tamil? A. Probably.

Q. You stated that there were differences showing differences of writing habit? A. Probably.

Q. You gave evidence for the defendant in that case? A. I think so. Judgment was given for the plaintiff. I do not know whether that matter went up in appeal.

30

Q. You gave evidence in a D.C. Gampaha case in which there was a question to set aside a deed that was alleged to have been written by one Peter Rajapakse? A. I think so.

Q. In that case they sought to set aside a deed that was executed in 1939? A. Probably.

Q. You were given three genuine signatures in that case and asked to examine the deed which was alleged to have been written in 1939? A. Probably.

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Q. It is also correct that when you made your report you were under the impression that the genuine signatures referred to the years 1932 and 1936 whereas in fact the two genuine signatures were in 1926 and 1932? A. Probably. I do not remember the dates.

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10 Q. You were given certain admitted signatures and you thought the signatures are close to the time of the impugned document? A. Yes.

Cross-  
examination  
- continued.

Q. The impugned document was in 1939? A. Yes.

Q. In that case judgment went for the other side? A. Yes.

Q. There you referred to an underscore which was present in one and absent in the other? A. Probably.

20 Q. There too there were certain two words which were in one joined and the other disconnected? A. Probably.

Q. There was a reference to a flamboyant effect like the " " here? A. Probably.

Q. What was the special instructions you gave the photographer who took these photographs? A. To make large enlargements preferably 12 x 10 of each signature.

Q. You did not give any specific instructions with regard to any letter formations? A. No.

30 Q. In other words, you did not give him any specific instructions with regard to any details of the formation etc.? A. No.

Q. Do you agree that every handwriting expert should himself be a good photographer? A. It may be advantageous but not necessarily a defect.

Q. You gave evidence in a Matara Case? A. Several.

Q. Do you recall having said in a Matara case "I agree that every handwriting expert should be a photographer"? A. I could not have said that.

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I know Forensic Criminal Investigation by A. Lucas. (Passage at page 243 put to witness)

Q. "In chemico legal work, photography is most important and every expert should himself be a good photographer". Do you agree with that or not?

A. The kind of expert referred to is the person who takes prints of finger prints and blood clots. It is not in particular reference to a handwriting expert.

Q. Do you agree with that observation?

A. Generally, Yes.

10

Q. Are you able to describe a perfect negative?

A. No.

Q. You have no knowledge of photography? A. No.

Q. You agree that the taking of photographs and the making of enlargements is to demonstrate the fact evidence in Court? A. Yes.

Q. Do you agree that a document photographer is quite different from a portrait photographer?

A. In the sense he will use different apparatus.

20

Q. Do you know that in photographs that are taken of documents there is the element of blackness, whiteness and brightness? A. Yes.

Q. If they are not properly taken in view of that the details may be lost? A. What type of details?

Q. Details with regard to pen lifts? A. No.

Q. Would you get a distorted effect otherwise?

A. One can take distorted photographs like trick photography.

Q. If you do not have the relationship of brightness to blackness you get distorted photographs?

A. With regard to colour only but not with regard to the details.

30

(Shown R47) Q. Did you notice the stroke in front of "C" in the impugned signature? A. I see it now.

Q. Did you observe it before? A. I did not pay any attention.

Q. This is not a photograph that is taken on the lines of the relationship of brightness to blackness which presents the pictorial effect? A. No.

40

Q. So that a detail like that may be lost? A. Yes.

Q. A photograph and an enlargement taken on scientific lines would produce a demonstrative photographic fact evidence for a Court? A. I would like that in a plainer language.

Q. If you take a document photograph on scientific lines it will assist the Court a good deal because it would be a demonstrative photographic fact for the Court? A. Only in some cases, where you want to show size and proportion, where you take the photographs against a marked ruler.

Q. Do you think that enlargements could have been made of different letters of the signature instead of your drawing sketches? A. Could have been.

Q. The sketches were drawn by you or a student of yours? A. By me. It was not by someone else under my supervision.

Q. When you draw the sketches they are certainly by no means as accurate as enlarged photographs? A. Yes.

Q. When you draw them they would not be such correct reproductions as an enlarged photograph that is taken? A. Mathematically no. Osborne was a well known authority on handwriting.

(Page 51 of Osborne on Questioned Document Problems, 2nd Edition, put to witness) Q. "Properly designed and correct photographs may alone almost prove the facts in a contention in Court or they may mislead and confuse and aim in defeating justice". Do you agree with that? A. Yes.

Q. Do you agree that if accurate enlargements of the questioned signatures and specimen signatures are not made on the same scale it can produce a misleading effect? A. In some ways only.

Q. You have already stated that these documents have not been taken to a proper scale? A. Yes.

(Shown P24) Q. Everyone of the documents V1-V22 have been taken to a scale? A. Yes.

(Passage from page 57 of Osborne (same edition) beginning with the words "If enlargements are to be made to a definite scale" and ending with the word "pinion" put to witness) Q. Do you agree with that? A. Yes.

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Q. "A focussing glass enlarging about 10 diameters and made so as to exclude all side light is also very useful and for the finest work is almost indispensable". Do you agree with that? A. Yes.

Q. "Direct enlargements above 10 diameters are necessary only when that which is to be shown is a microscopic character and these reproductions are usually described as photo-micrographs" (page 56)? A. Yes. I agree with that.

Q. "They are very often effective illustrations"? 10  
A. Yes.

Brewester is also a well known authority.

(Passage at page 425 put to witness) Q. "Every document photographed should contain an indication as to the degree of enlargement or reduction". Do you agree with that? A. That is his opinion. It is not my opinion. I do not agree with that. I agree with Brewester, but on that point I do not agree with him.

Q. In other words, you say every document photo- 20  
graphed need not contain a degree of the enlarge-  
ment or reduction? A. Need not.

Q. Do you agree with this: "For the purpose of an accurate comparison it is essential that photographs should be taken to the same scale"? A. In certain aspects, yes. In questions of proportion and size and things like that enlargements must be on the same scale and not for a change in writing habit, for the addition or omission of a letter. I do not agree with Brewester in that particular para- 30  
graph.

Q. Do you agree that measure or scale should appear on all enlarged photographs? A. No.

(Page 57 of Osborne on Questioned Document Problems put to witness) Q. Do you agree with this: "The name of the photographer should not appear on all the groups of signatures but the measure should appear"? A. It is not necessary. I do not agree.

Q. "The measure part alone should appear on all the enlarged photographs"? A. I do not agree. 40

Q. Do you agree with this (page 52) "The photographs of the disputed and the standard writing may not be

enlarged on the same scale thus producing a misleading effect"? A. I agree in certain aspects. If the question before the Court is question of size and proportions, yes. If it is in relation to absence or inclusion of certain letters, no.

Q. In your report did you refer to the size of the " 25 "? A. I referred to the proximity of the two ends. I was not referring to the size.

10 Q. Did you give evidence this morning to the effect that the commencing and terminal heads in the " 25 " in the standards, if carefully examined, is bound to be much closer than the distance shown in the disputed signature? A. Yes.

Q. Can you do that without reference to a scale? A. I am not referring to the size of the " 25 " and therefore a scale is not necessary.

Q. But you are talking to the size of the aperture on the top? A. Yes.

20 Q. You are referring to the size of a portion of the letter " 25 "? A. Yes.

Q. Can you do that without reference to scale? A. I can. It may be visible to the naked eye. It is so evidently visible that the scale is not necessary.

Q. If it was to a scale the thing could be seen and demonstrated to a nicety? A. Yes.

30 Q. Now do you agree with this: "The photographs of the disputed and the standard writing may not be enlarged on the same scale thus producing a misleading effect"? A. Yes.

(Further Hearing on 22.3.56.)

Sgd. V. Siva Supramaniam.  
A.D.J.

22.3.56.

Appearances as before.

D. Muthukrishna - Recalled - Sworn.

Cross-examination continued.

Q. Do you agree that an expert should not be a partisan witness? A. Yes.

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Q. Would you be able to tell me generally whether you feel in this case you were supplied with sufficient material to give a final opinion in regard to these two signatures? A. As I indicated on the last date I asked for more standards originally but they were not available, but subsequently they were made available to me.

Q. Do you feel as an expert that the material that was supplied to you with regard to Mr. Vethecan's signature was not quite sufficient for you to express a final opinion? A. At the commencement I did not consider it sufficient but subsequently I had further sufficient material.

10

Q. You had to give an opinion? A. Yes.

(Mr. Navaratnarajah marks as R65 the report of this witness on the two signatures dated 19.9.55.)

Q. When you gave your report on 19.9.55 did you feel that the material that was supplied to you was not quite sufficient? A. In regard to the Sinhalese signature it was sufficient.

20

Q. In regard to Mr. Vethecan's in the absence of any other you feel it was a defect at the time? A. In view of the fact that no other signatures were available I made my report on what were available.

Q. At the time you gave your report in September 1955 with regard to Mr. Fernando's signature you thought you had the sufficient material? A. Yes.

Q. But with regard to Mr. Vethecan's you felt the material was not quite sufficient? A. I would have felt happier to have had more.

30

Q. Do you know what a stereoscopic microscope is? A. Yes. It would bring the matter under consideration in the three dimensions. It is the stereoscopic microscope that is referred to in the well known text-books. In the ordinary microscope you have one eye. In the stereoscopic microscope you have two eyes. You can see three dimensions in the stereoscopic microscope. You can see the length, breadth and the depth.

40

Q. Do you know what a transmitted light photograph is? A. Yes. It is a photograph taken against

a light. A light or open door forms the background. The camera is in the foreground. The document is placed between two pieces of glass.

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Q. Transmitted light is: you place the light below the signature so that light comes in from below?  
A. Yes.

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Q. That is also one of the well known methods of examining impugned documents? A. Yes. They are also referred to in the text books.

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10 Q. Can you tell us whether you gave any specific instructions to the photographer to take transmitted light photographs? A. No.

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Cross-  
examination  
- continued.

Q. Did you make any stereoscopic examination yourself? A. I have.

Q. Mr. Vethecan's signature is written with a steel resilient pen? A. I did not give my mind to it.

(Shown the original signature) Yes, it is written with a steel resilient pen.

20 Q. When you look at it under the stereoscopic microscope you see the two edges of the resilient pen? A. Yes.

Q. You see whether the stroke is a clean one or whether there is an interruption in the stroke?  
A. Yes.

Q. In between the two corners traced by the pen nib you see the ink flow as in a ditch? A. Yes. The ink flow is a big flow.

Q. The most important thing is to see whether the two sidelines are continued or separate? A. Yes.

30 Q. It is an important matter? A. Yes.

Q. Did you obtain through the lawyers permission from the Court to examine or is it on the instructions of the lawyers you examined? A. I was given permission to examine. I think it was a court order and I was accompanied by the lawyer in question. I did make an examination. Forgeries can be committed in different ways, by tracing, by ball point pen.

40 Q. In deciding whether a thing is a forgery or not an expert has to consider the technical side; the

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other is the actual examination of the letter formation etc.? A. Yes.

Q. Tell me whether there was anything on the technical side to show it was a forgery? A. Yes, in Vethecan's signature.

Q. The stroke? A. Yes.

Q. Which you have demonstrated in your sketch? A. Yes.

Q. Apart from that there is no other technical defect? A. Yes.

10

Q. Apart from the pen-lift which you have referred to in the letter "V" in Vethecan's signature, there was no evidence of an erasure, no evidence of an abnormal indentation or anything like that? A. No.

Q. No evidence of paper fibres being disturbed? A. No.

Q. Apart from that pen-lift that you referred to in the letter "V" in Vethecan's signature, you have told the Court that there is nothing on the technical side to give evidence of a forgery? A. Yes.

20

Q. If the expert has only therefore to express an opinion on the comparison of letter aspects it is a little dangerous to come to a final opinion? A. Why do you say so? It is possible to come to a conclusion.

Q. Do you know that people in the handwriting world have taken different views? A. Yes.

Q. They say it is unsafe to express a final opinion on the correctness or otherwise of a signature unless you have technical evidence. There is a school of thought that way? A. There may be.

30

(Shown P24) There are 21 signatures. These are signatures taken before, at the time of, and after the impugned last will P11. (Shown V12 and V13) The "C" in V12, the opening is smaller than the opening in V13. The bottom stroke is shorter in V12 than the bottom stroke in V13. In fact, there is no flourish in V12 in that bottom stroke but in V13 not only is that stroke longer but there is a flourish as well. In the start of the letter "V" in V12 there is no flourish. There is a flourish

40

in the start of the letter "v" in V13. The first "E" in the word Vethecan in V12 is disjunct from the capital "V" whereas in V13 it is contact with the letter "v".

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10 Q. In V12 "E" is made and a long linking stroke and is continued to make the letter "T"? A. No. It is not continuous. In V13 the long stroke of the letter "E" there is a pen-lift and the down stroke of the "T" is put thereafter. In the letter "H" there is a loop which is bigger than the loop in the other and of a different shape in V12 and V13.

Q. The letter "C" in Vethecan in V12 is in the shape of a letter "A"? A. It can be in the shape of the letter "E" also.

Q. But the shape of the letter "C" in V13 is different from the shape in V12? A. The same style, but different in size.

20 Q. In V12 the last two letters look like "UM"?  
A. Yes.

Q. Whereas the last two letters in V13 have got a different shape? A. Of the last two letters the first letter "A" has an open loop. It is not a continuous oval. The same feature is in the next signature also. The same style is maintained.

Q. The last two letters in V12 are of a different formation? A. Yes.

Q. You deal with signatures which are in relation to a base? A. Yes.

30 Q. Sometimes parallel to a base, sometimes uphill, sometimes downhill, sometimes semi-circular?  
A. Yes.

Q. That is something you knew in books dealing with signatures? A. Yes.

Q. The signature in V13 is semi-circular in shape?  
A. Yes.

Q. Whereas in V12 it is uphill? A. Yes.

40 Q. Looking at V11, V12 and V13, would it be correct to say on a consideration of V12 and V13 there is a regular irregularity? A. I disagree to a certain extent. Pictorially they may give that

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impression. The signatures are formed in certain sections, first the "V", then the "E", then the "THE", then the "C" and the "AN". These breaks are maintained in the two sets of signatures. Secondly, the cross-bar of the letter "T" forms the downstroke of the letter "H" showing the connection between "T" and "H". That feature is also maintained.

Q. Look at V6. There is an extra limb resembling "a" in Vethecan? A. My impression is that like V12 the final stroke of the letter "E" and the final stroke of the "T" are blurred. In V6 that blur is higher giving the impression of a dot or like a "A" or "O". It need not be a separate letter. It is a meeting point of two strokes.

10

(Witness looks at the original signature V6 on Deed 1647)

Q. Question repeated? A. It appears to be so pictorially.

Q. The first letter "C" in P24 has many variations in V2, V3, V4, V9, V10, V13, V18, V20, V21? A. Yes.

20

Q. In fact, some of the "C's" look like "a's" for instance, V6 in contra-distinction to V22 is like a tick stroke, or for instance, V18? A. Yes.

Q. In V3, V4, V8, V10, V12, there is no downward tick there? A. Yes. (Witness looks at the original of V4 - monthly list of 11.4.49) I wanted to look at the original, as I thought there is an inward retrace in V4; in V12 you see it in a slightly extended way. From V13 towards the bottom tick is very evident. At the very final end of the letter "C" you find a darker patch.

30

Q. Is there a tick or no tick? A. The tick sometimes ends there; sometimes it is inwards.

Q. Can you see it? A. You cannot see it with the naked eye. I feel there is an inward tick.

Q. You are saying that there is to be seen a tick at the end of that letter "C" in the original? A. (Witness looks at it under the stereoscopic microscope) It is not evident. In V8 there is no tick. In V10 there is no tick.

40

Q. The full stop - there is no full stop in V4?

A. There is. There is a full stop embedded in the downstroke of the "V". I do not think it is a pen-lift. In V15 there is no full stop. In V3 there are two full stops. In V2 I notice where the full stop is. In V3 I notice where the full stop is. In V7 I notice where the full stop is. In V8 I notice where the full stop is. In V21 I notice where the full stop is and in V22.

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10 Q. Having looked at them, it has been placed at different places in the signature? A. Yes, right of the initial "C".

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Q. In V18 and V19 the dot is what is called the carat form? A. Yes. In V2 the letter "v" is in the usual form of "V". So it is in V6. So it is in V8. So it is in V21.

20 Q. It is in the shape of the letter "U" in the following: V4? A. It is different to V2, but I do not know whether it is like "U". It is slightly different in formation. It is a little like "U". In V7 it is definitely like "U". In V12 it is definitely like "U". In V13 it is definitely like "U". In V22 it is definitely like "U". In V20 it is definitely like "U".

Q. Look at V5, is it in the shape of the Sinhalese letter " } "? A. Yes.

Q. In V12? A. Yes.

Q. In V19? A. Yes.

30 Q. In V15 it is like the capital letter "I" in English? A. Yes.

Q. V14 is like a "W"? A. There is no centre stroke. The two loops touch each other. The shape looks like a "W" shape.

Q. V17 is in the form of ampersand? A. Yes. V17 is dated 14.5.51. The impugned last will P11 is said to be two weeks before that.

Q. Look at these signatures in relation to the base. There is no fixed line of writing? A. Yes.

40 Q. For instance, V13 is in semi-circular shape? A. Yes.

Q. V17 is uphill? A. Yes.

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Q. V18 is slightly downhill? A. Yes.

Q. There is no consistency in relation to the base?  
A. Yes.

Q. You referred to a muscular deterioration of the  
hand? A. Yes.

Q. 1949/1950 up to 1951 it is not a steady muscular  
deterioration? A. Up to V12 7/9/50, if you ex-  
clude V9 for the moment, he was in a position to  
write on a firmer base than evidence in the signa-  
tures V13 onwards.

10

Q. If you look at V12 and V13, they are on the same  
date, from the same document? A. Yes. (Witness  
is shown the original signatures) V12 and V13 are  
the two signatures appearing on one and the same  
deed 1660 of 7.9.50. V12 is the signature of the  
Notary Mr. Vethecan attesting the signature of the  
executants of the document. V13 is on the next  
page, Mr. Vethecan's attestation clause.

Q. In V4 there is no outward open tick in the let-  
ter "V"? A. Yes. It is not in V5. It is not  
in V6. It is not in V7. It is not in V9. It is  
not in V10. It is not in V11. It is not in V12.  
It is not in V13. It is not in V14, V15, V16, V17,  
V18. It is not in V19, V20, V21 and V22.

20

Q. This is not a skilful signature? A. Skilful  
is difficult to interpret. We say literate and il-  
literate.

Q. It is not a signature that is individualistic?  
A. Yes.

Q. There is in these signatures from what has been  
put to you what I might say is a regular irregular-  
ity? A. Yes.

30

Q. Muscular deterioration can be the result of  
advancement of age? A. Yes.

Q. There can be partial muscular deterioration  
temporarily as a result of hard drinking? A. Yes.

Q. There can be partial loss of muscular control as  
a result of advancement of age or it can be tempor-  
arily in the case of a person who has been drinking  
too much particularly? A. Yes.

40

Q. You were given two standards of Mr. Vethecan?  
A. Yes.

Q. Which you described as the signature of a person who had lost muscular control? A. Yes.

Q. You compared those two with the impugned signature which appeared to be that of a person who had complete muscular control? A. Yes.

Q. Did it cross your mind that the two standards that were given to you may have been due to partial muscular deterioration as a result of some temporary cause like drink? A. No.

10 Q. Now that I put that matter to you, it could be due to the result of drink? A. If a person wrote a signature after a heavy bout of drinks, it would be erratic and angular. He would not be able to put down his pen at the point he picked it up. It would be disjointed movements.

20 Q. To the observer the two standard signatures to the view appeared to be somewhat different?  
A. In what way? In R46a there is an up stroke in the letter "C".

Q. It is not so in R45a. A. It is in the same angle. It would not be parallel. It is in the same angle. The angle may be slightly smaller.

Q. In R46a the letter "C" appears to be of very shaky hand? A. It appears to be and possibly it could be the fault of the nib also.

Q. But in R45a it is different? A. Yes.

Q. The "C" in R46a is the normal shape? A. Yes.

30 Q. In R45a it is the hollow square shape? A. If you want to differentiate one from the other it is like that but I say it is the normal shape. The "V" in R46a is like a "U".

40 Q. In R45a there are two strokes and no formation of a letter? A. Yes, the angle between the two strokes is closed. In R46a there is a gap but in R45a there is no gap. The letter "V" in R46a has got the shape of a "U". In R45a there are two strokes. There is no bottom connecting stroke to connect the letter "V". In R46a the "E" is open and larger. It is not so in R45a. The terminal stroke has stopped in R46a. It is a shorter one in R45a. It is short and continued.

(Lunch).

Sgd. V. Siva Supramaniam.  
A.D.J.

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After Lunch. Appearances as before.

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Q. Look at the downstroke of the letter "T" in R46a and the up stroke of the letter "H". They are together in R46a? A. There is no up stroke of the letter "H".

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Q. In R45a it is divorced and standing apart?  
A. Yes.

Q. In R46a in Vethecan from the second letter "E" it is an illegible scrawl? A. Yes.

10

Q. If you did not know the signature you could not read it? A. Yes.

Q. But in R45a there are the letter formations?  
A. Yes.

Q. It looks like "A", "E", "A" and "M" or "N"?  
A. Yes.

Q. As an expert when you called for standards, and you said standards were not available, you gave an opinion in September 1955, will you concede that that opinion that you gave was based on material that was not sufficient? A. I had these two standards and after closely examining them in spite of slight variations there were certain regular features which were evident in both signatures and absent in the disputed signature.

20

Q. These two signatures R46a and R45a are signatures taken of the executant on the same day on the same paper at the same time? A. I do not know about the same time.

30

Q. There are a number of differences appearing to the eye pictorially between R45a and R46a?  
A. Yes.

Q. R45a can hardly be called a specimen compared to R46a? A. Any one of these individually may not have been sufficient at all if I had to use that one as a comparison standard only but when taken together they had features common to each other which were useful in comparing.

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Cross-  
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- continued.

- Q. You know what preliminary opinion and final opinion in handwriting are? A. To a certain extent it is understood. If you are given a certain number of standards and more standards are promised you would give a preliminary opinion subject to the later opinion. I know the standard books like Brewster and Osborn.
- 10 Q. When you are given some standards, whether the question of other standards are forthcoming or not, a person arrives at an opinion? A. Yes.
- Q. Which in your language would be called a preliminary opinion which after comparison with other standards may develop to be a final opinion confirming that or may be final opinion not confirming the preliminary opinion? A. That is what I said. I was given two standards of the same day, same document, which have got some pictorial variations.
- 20 Q. There is a possibility which did not cross your mind; it may be by an executant who was under the influence of drink? A. It is impossible that he would have signed under the influence of liquor because both have similar features.
- Q. If a person fully under the influence of alcohol signs two signatures on the same day, the two signatures will not contain pictorial similarities? A. It may not.
- Q. But it may contain? A. It may.
- 30 Q. In other words, it depends on the individual as well? A. Yes.
- Q. It depends on the quantity of alcohol he may have taken? A. Yes.
- Q. A person may under the influence of alcohol put two signatures on the same day which are pictorially different? A. Yes.
- Q. Or pictorially similar with certain variations? A. Yes.
- 40 Q. You were given both standards. Those two standards have certain variations pictorially. It is possible that they may be the signature of a man under the influence of liquor? A. Generally, may.

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Q. If that crossed your mind when you were given the two standards don't you think it would be very dangerous to pronounce a final opinion based on your inspection of those two standards? A. As I stated the person under the influence of liquor would be erratic in the signature. Two signatures written one after the other would not be similar in style specially if he was under the influence of liquor, but there is a similarity in style and regularity of habit in these two signatures which is entirely absent in the disputed signature. Similarity of style is the non-experts language. In expert language it is the writing habit.

10

Q. You undertake to say looking at R45a and R46a there is in them a writing habit which enables you to find out whether the third one is a forgery?  
A. Yes.

Q. You think that an opinion with regard to writing habit can be formed with the examination of two standards? A. Yes. I can illustrate it. A passage from Osborne page 27 was read to me.

20

Q. You did not agree with that passage? A. I said there was the converse.

(Evidence at page put to witness) Q. You cited Brewster page 438 as being some sort of authority for the two standards?

(Mr. Navaratnarajah states that the passage he read out begins with the words "As is well known the best methods" and ends with the words "as it is written".)

30

Q. If you look at Brewster, is that any authority for the proposition that two signatures will do?  
A. No. It is merely a statement as to request signatures.

Q. This paragraph deals with request signatures?  
A. Yes.

Q. In open Court you ask people to give signatures on request? A. Yes.

Q. That passage deals only with request signatures?  
A. Yes.

40

(Pages 27 and 28 of Osborne on Questioned Documents put to witness - Passage beginning with

the words "A positive conclusion" and ending with the words "adequate amount of .... Standard writing after his final decision is given" (Middle two paragraphs put to witness) I agree with that passage. (Next passage is put to witness) I agree with that. I have already told Court that Mr. Vethecan's signature was not a highly individualised signature.

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- 10 Q. Do you find there the distinction between a preliminary opinion and a final opinion?  
A. According to the number of standards.

(Shown page 243 of Vol.32, No.2, of the Journal of Criminal Law and Criminology. Passage read on the similarity of subject matter and also the amount of standard writing) I do not agree with certain statements. I have not had training in England. I have not had training abroad. I have a Diploma from India on a correspondence course. I do not consider that of any importance.

- 20 Q. You have not obtained practical knowledge with regard to handwriting outside Ceylon? A. No.

Q. You have disagreed on some points with Brewster in this case? A. Yes. Brewster also gives the contrary view. I disagreed with certain passages of Brewster but they are supported by Brewster himself.

Q. In other words you say Brewster is inconsistent?  
A. I would not say that. I would read out the passage.

- 30 Q. You disagree with Brewster's opinion which I put to you? A. Yes.

Q. You disagreed with the opinion given by Osborn on a point put to you? A. Yes.

Q. You disagreed with the view expressed in the journal of Criminal Law? A. Yes. I am also supported by Brewster and also supported by Osborn.

Q. "Unfortunately this is far from the truth" (Passage read from the Journal of Criminal Law) - do you agree with that? A. I disagree.

- 40 (The next sentence reading "As already pointed out the variations common to all writings make this impossible for only by means of a number of writing specimens ....." put to witness) A. I agree that

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the more standards available the better for the case, but it does not necessarily follow that one cannot give a fairly conclusive opinion on the standards available.

Q. If the standards are few the opinion that you form is a preliminary opinion? A. If they were the only standards available it would be the final opinion.

Q. If the standards given to you are few whilst other standards are available, the opinion that you form is a preliminary opinion? A. Yes.

10

Q. And then by an examination of the other standards that are available you either confirm that preliminary opinion or throw it overboard? A. Yes.

Q. And the last opinion is called the final opinion? A. Yes.

(Shown enlarged photograph of the letters "CV" as appearing in R47-P26) This shows the break in the letter "V" appearing in the photograph R47 more clearly? A. Yes.

20

Q. It shows a fresh piece of writing which you said was a pen lift? A. Yes.

Q. And that is the feature which you have shown in your pencil drawing R51? A. Yes.

(Shown enlarged photograph of the same letters "CV" of the original document P11 marked V1-P27)

Q. In the photograph P27 that feature that is shown in P26 is absent? A. Yes.

Q. In P27 is a clean stroke unlike in P26 where the arrow shows the break? A. Yes.

30

Q. The enlarged photograph P27 shows the flow of ink in the middle? A. Yes.

Q. This is transmitted light photograph? A. Yes.

Q. You were asked about a steel nib. You find the edges of the "V"? A. Yes.

Q. And in the middle the ink is in what is called the ditch? A. Yes.

Q. Did you examine the original before you asked the

photographer to photograph this "C. Vethecan" in the impugned document? A. I did.

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Q. You did not give any special instructions to the photographer apart from saying make it enlarged in size? A. Yes.

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Q. You did not draw his attention to anything like a pen-lift which appears in P26? A. I did not

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10 Q. You discovered in the enlarged photograph R47 what you opined was a pen-lift? A. I discovered it in the original examination.

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Q. You discovered that in the original? A. Yes.

Cross-examination - continued.

Q. In other words, you say that the original contains that feature which is shown in P26? A. Yes. I am sure of that.

(Shown P11) Q. Can you see that in the original? A. Yes. What is really visible is the fact that it shoots off at an angle.

20 Q. Will you kindly look at P26. In P26 on the Eastern side of the arrow you have got a mark? A. Yes.

Q. That is what you said was a pen-lift? A. A break.

Q. That is not appearing in P27 the transmitted light photograph? A. Yes.

Q. Is P26 a transmitted light photograph? A. No.

30 Q. A transmitted light photograph is a better clearer reproduction than the ordinary photograph? A. No. I mean it is not necessary. There is no authority to say that. There is no authority to say that transmitted light photographs in all cases will be better.

(Shown P28 Photo of the letter V on the original P11) Q. Can you tell me whether it is a transmitted light photograph or a direct one? A. I cannot.

Q. (Shown P29 Photo of letter V on the original P11) Is that a transmitted light photograph or an ordinary one? A. I cannot say.

40 Q. The break in P26, does it appear in P11? A. Yes.

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(Sir Lalitha states that R47 was given to him by the Court on 3.3.56 and the photograph P26 is a photograph of R47)

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There is a break but not exaggerated to the extent as shown in the photograph R47.

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(Sir Lalitha marks the negative of the photograph R47 as P30)

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examination  
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(Shown P31 the negative of the photograph of the actual signature appearing in P11) There is no break shown there.

10

(Page 44 of Osborn dealing with transmitted light photography put to witness - Passage commencing "Where the question is one of continuity of strokes" and ending "discernible in a transmitted light photograph") Q. Do you agree with that? A. Most of these books give one version in one chapter and another version in another.

Q. Do you agree with that passage? A. I agree with that.

(Witness is asked to examine the original signature on the will through the stereoscopic microscope)

20

Q. Does the break appear? A. Not to such an exaggeration.

Q. Does it appear at all? A. It is like the transmitted light photograph P27 and it does not appear.

(Shown negative P32 (which consists of negatives P30 and P31) - the negative shown being that of P30 projected on the screen in open court).  
A. It shows the break as appearing in R47 and also in P26.

30

(Shown negative P32 projected on the screen in open Court the negative corresponding to P31)  
A. The break is not shown.

Q. You did not in fact notice the beginning stroke in R47 until I drew your attention in Court?  
A. Yes.

Q. In the transmitted light photograph P27 the stroke is clearly discernible? A. Yes.

40

Q. Raked light photograph and transmitted light photograph enlargements are the ones that give the best results for examination? A. Probably.  
I have read Brewster and Osborn.

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Q. The books will show that transmitted light or raked light microscopic photographs are best to detect pen-lift with scientific accuracy? A. Yes.

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10 Q. As it is not in the original and it appears in the magnified photograph R47, there has been some tampering of the negative? A. Or in the alternative tampering of the original.

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examination  
- continued.

Q. But there is no tampering of the original as seen today? A. Yes.

Q. Did you give any specific instructions to the photographer with regard to this break? A. No.

20 (Shown a passage in Brewster page 432 beginning "In order to" and ending "glossy paper") This is a technical point which I am not certain of. This is a technical point of document photography with which I am not familiar.

Q. One of the strongest points you made with regard to the signature of Vethecan is this pen-lift?  
A. It is one point.

Q. And you demonstrated that by R51 in which you make an observation? A. Yes.

Q. You cited a passage from Osborn on Questioned Documents, 2nd Edition (1946), at page 267 (pages of the evidence) to show that these drawings are permissible? A. Yes.

30 (Passage at page 267 beginning "The writing to be examined" and ending "point under discussion" read to witness) Q. It refers to your producing your photographs and drawing diagrams in open Court?  
A. Yes.

Q. There is no reference to your drawing charts at home as in this case? A. Yes. I do not agree with the later statement by Osborn. There are certain matters on which I have not agreed with Osborn and Brewster.

40 Q. Little dignified isolations? A. Supported.



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Q. Can you give any passage in Osborn contrary to the passage I have read now? A. I cannot tell off-hand. With regard to this I cannot say either way at this moment.

Q. You disagree with Osborn when he says "It is not permissible and not desirable to make comments on photographs that are enlarged"?  
A. Yes.

Q. "The objection to evidence in written form is usually sustained ..... extended nature"? Yours is not an observation on a photograph. A drawing is something done by a human being with the human element of error? A. Yes.

10

Q. This passage has nothing whatever to do with drawings you made at home? A. Yes.

Q. It has everything to do with demonstration you can make in Court? A. Yes. I agree with the passage beginning with the words "There are certain kinds of photographic enlargements" and ending with the word "conspicuous".

20

(Sir Lalitha moves that R47 be kept in the custody of the Court like P11. I allow it.)

(Shown R46a) Q. There appear to be three pen-lifts in the letter "V"? A. Yes.

Q. Do you think you can draw that to be seen in Court?

(Witness draws it. It is marked by Sir Lalitha as P33)

(Mr. Navaratnarajah desires to have P33 also kept in the custody of the Court. I allow the application.)

30

Q. In the Matara Case 20779 you gave evidence in 1951? A. Yes.

Q. You said: "I have given evidence in cases from 1949. My father died about two years ago. He died in April 1949. Since April 1949 I have given evidence about 8 or 10 times"? A. That would be correct.

Q. "I agree to a certain extent with the view that the method of comparison by formation is an untrustworthy guide to form an opinion with regard to the genuineness or otherwise of a writing"? A. Yes.

40

Q. "I was not present when the photographs were taken. Apart from the documents I made a comparison from the photographs too. Both on the documents and on the photographs I came to this conclusion"? A. Yes.

Q. "I took the photographs home and examined them. I arrived at my opinion from the photographs as well as from the actual signatures appearing in the documents?" A. Yes.

10 Q. "I did not give instructions with regard to the taking of the photograph of the documents"?  
A. Yes.

Q. "I have read Lucas. I agree that every handwriting expert should be a photographer"? A. I do not recollect but if I have stated this it is correct.

(Sir Lalitha marks the passage P34)

Q. "I agree with the statement of Osborn at page 51"? A. Yes.

20 Q. "There is no scale. I agree that every document should have a scale"? A. Yes.

Q. "No scale is reproduced here. That part with regard to my basing my opinion on the photograph is vitiated to that extent"? A. I do not recollect, but if it is there it is correct.

30 Q. "I agree with the opinion of Brewster that if the photograph is not properly taken, no opinion should be expressed. I have not taken a transmitted light photograph. I did not take the photographs in this case. Those photographs are not taken by transmitted light photograph"? A. Yes.

Q. "I did not instruct the photographer with regard to these points"? A. Yes. I said I asked for standards with regard to Mr. Vethecan's signature after I gave my opinion.

40 Q. You did not ask for standards yourself with regard to Mr. Fernando's signature? A. No. I said in evidence at page that I asked for more standards of Vethecan's signature about 4 or 5 months before the trial date 3.3.56. 4 or 5 months would be about November.

Q. But you gave your report in September ?

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A. I may have been wrong when I said 4 or 5 months.

Q. When you gave evidence in Matara that was about 2 years after you started giving evidence on handwriting? A. Yes.

Q. You said you agreed with Lucas? A. Yes.

Q. You disagreed with Lucas today? A. To a certain extent. What I said in Matara is correct. I probably did say it. Today I disagree with that passage in Lucas. On the last date I said it had reference probably to blood stains.

10

Q. Did you say that by guess or did you know the passage? A. I did not know the passage. That is why I said 'Probably'.

Q. In other words you thought in 1951 you agreed with Lucas? A. Yes.

Q. You were then only 2 years giving evidence on handwriting? A. Yes.

Q. In 1956 you disagreed with him and you gave the reason that it referred to finger prints and blood clots and had no reference to a handwriting expert? A. I disagreed with Lucas on the reason given.

20

Q. Whether it refers to finger prints, blood clots or handwriting you disagreed with him? A. In handwriting where questions of size and proportion were concerned I agreed and not if it is in relation to absence or inclusion of certain letters.

Q. If it relates to handwriting matter you disagree with Lucas' statement there? A. Yes.

(Passage at page 248 of Lucas beginning "In Chemico legal ...." and ending "photographer" put to witness) Q. You disagree? A. I say it is desirable that he should be a photographer. I disagree with Lucas when he says "should himself be a good photographer".

30

Q. Brewster and Osborn say "element of personal error arises if you give instructions to A and he takes photographs"? A. Yes.

(Passage beginning "There are few branches" and ending "questioned documents and finger prints" put to witness) It is contradicted by the sentence

40

before it. In other words, he need not necessarily take the photographs.

Q. It is not absolutely necessary that a handwriting expert should be also an expert photographer because of the reasons that he has given? A. Yes.

Q. The general observation of Lucas has reference not only to blood clots but it applies with regard to finger prints and questioned documents?  
A. It is desirable.

10 Q. Lucas refers in that passage not only to finger prints and blood stains but also to questioned documents and finger prints? A. Yes.

(Further Hearing on 26 March, 31 May, 1 June, 19 and 20 June, 1956).

Sgd. V. Siva Supramaniam.  
A.D.J.

26.3.56.

Appearances as before.

20 Errors in previous day's proceedings corrected by consent.

D.Muthukrishna, recalled - sworn.

Cross-examination continued.

Q. Do you own a stereoscopic microscope yourself?

A. Yes.

Q. Have you brought that to Court? A. Yes.

Q. Have you brought your magnifying glass? A. Yes.

(Counsel wants me to examine the signature of C. Vethecan on P11 and also examine the same through the stereoscopic microscope. I do so).

(Shown document P11)

30 Q. First of all Mr. Muthukrishna with your magnifying glass examine the letter 'V' - there is no erasure, no disturbance of the fibres of the paper?

A. No.

(Witness examines the signature with the aid of the stereoscopic microscopic). There is no tampering or any erasure.

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Q. Mr. Muthukrishna on Mr. Vethecan's signature you are aware that in the document 46a, Mr. Vethecan had struck off his signature on page 3 of the Last Will? A. Yes.

Q. The signature that has been struck off appears to be a firm signature? A. Only the initials can be clearly seen. The rest is rather blurred.

Q. Looking at the initials it appears to be firm? A. Yes.

Q. At the time you gave your report Mr.Muthukrishna you had not been told that he had signed on page 3 of this Will and the signature had been scored off? A. Yes. 10

Q. You now know that the standards given to you are the ones appearing in the previous page of that Last Will and page 4 of the Last Will? A. Yes.

Q. Striking off of the signature means in your language that he was not sure of his signature at the time he signed it? A. Probably,

Q. In any case whatever the attitude may be it means that the executant was not sure of his signature? A. Yes. 20

Q. Would you say Mr. Muthukrishna that if you had been given that reference that signature at page 3, it may have made a difference to your opinion as an expert - kindly look at it? A. It would have confirmed my view.

Q. The reason being that there is a pictorial similarity, is that what you say? A. No. The reason is that it has the same common features evident in the other two standards which I shall refer to later. 30

Q. At least give me an account of the common features? A. The cross bar of the letter 't'; the grouping of the letters.

Q. A minute ago Mr. Muthukrishna when I asked you whether this signature at page 3 was a firm one or not your answer was except the two initials CV the rest is blurred. That was just five minutes to His Honour? A. I am referring to the 2nd signature on page 3 which is not cut off. 40

Q. Will you kindly answer my question now with regard to that first signature - As an expert if you had been given the signature as a standard which was scored off on page 3 of that Last Will, it may have changed your opinion that is my question?  
A. No.

Q. Not at all? A. No. Because I cannot see half of it.

10 Q. But the half you can see is a firm signature as against the two standards that were given to you which were those of a person suffering from muscular deterioration - that would not change your opinion by one bit? A. No.

Q. If a person signs his signature inconsistently, would you be able to arrive at a writing habit of that writer? A. It would be my duty to find, if any, consistent feature and if that consistent feature was maintained throughout that would be a writing habit.

20 Q. If the signature of a person was irregular, then my question is it would not be possible to arrive at the writing habit of the executor? A. If I was unable to find a writing habit.

Q. If it was a regular irregularity then you cannot discover the writing habit? A. No.

30 Q. Then I want to put this to you Mr. Muthukrishna - Do you think Mr. Muthukrishna that on the material and the answers you have given up to now it would be safe for an expert to say that it is difficult or dangerous to have expressed an opinion on the two standards given to you? A. No.

Q. There have been many variations?  
A. Pictorially.

Q. There has been no fixed base line of writing?  
A. No.

Q. There is an instance where the executor has not been sure of his signature on writing it off?  
A. Yes.

40 Q. You have conceded that there has been regular irregularity? A. I think that was in the context of the base.

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(Sir Lalitha draws attention of Court to bottom of page of the proceedings).

(Mr. Navaratnarajah wants the witness to remain out of Court - He does so.)

(At this stage the witness comes into the witness box.)

(Counsel puts to the witness two statements of the witness at page 357 bottom and at page 360 half way down the page.)

Q. Mr. Muthukrishna in answer to a certain question which I am reading at page - It is not a signature that is individualistic? A. Yes. 10

Q. There is in these signatures from what has been put to you what I might say is a regular irregularity - that is correct? A. Yes.

Q. With that data Mr. Muthukrishna do you agree now that the opinion you formed in September, 1955 should be revised at all or to any extent at all?

(Mr. Navaratnarajah wants Sir Lalitha to specify the data) 20

A. I am still of the same opinion.

Q. In other words your opinion that you expressed in September, 1955 will not be altered by you one bit now? A. I would not say it will be altered one bit.

Q. Now Mr. Muthukrishna have you been able to verify since that last day whether your Proctors had made an application that you should examine this document P11 yourself? A. I had no occasion.

Q. I want to put it to you that you did not in fact examine the document P11, but you gave your opinion on the photographs? A. That is not correct. I examined it. 30

Q. As an expert in handwriting if you notice a point of a break which you find was a pen lift had been seen by you ought you not to have drawn the attention of the photographer to that fact? A. I did not think it necessary. Probably I should have asked the photographer.

Q. But you did not think so? A. No. 40

Q. Mr. Muthukrishna in ascertaining whether a signature is forged or not, a pen lift is an important item to be ascertained in a forgery? A. Yes.

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Q. There are important items which you thought you saw which does not exist in reality - you did not instruct your Photographer? A. No. Normally an enlargement should show it.

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10 Q. The fact of the matter now Mr. Muthukrishna that you observed something which was not existing. You observed a break which in reality was not in existence and the photographer produced a photograph which shows a break very clearly? A. Yes.

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Q. I want to put it to you Mr. Muthukrishna that the first stroke in Vethecan's signature, the letter "C", you had not noticed at all? A. No.

Q. You examined the document on a stereoscopic microscope? A. Yes. I saw in it a break what appeared to be a break which was not existent.

20 Q. And it is a remarkable coincidence that what you thought you saw appeared later in the photograph taken by the Photographer? A. Apparently.

Q. Now I want to put it to you Mr. Muthukrishna you have observed something which is not existent and not observed something which is existent. I want to put it to you that you never examined P11 again? A. I did examine.

Q. Mr. Muthukrishna have you got your notes of examination? A. No.

30 Q. Have you got any notes of examination at all? A. I would not have it. I make my notes on sheets of paper and they are not here now. Probably my notes will be at home. They are not in a book.

Q. I put it to you that it is incorrect to say that you asked for more standards before 3.3.56? A. I did ask.

Q. You got the standards after 3.3.56? A. Subsequently.

40 Q. I put it to you Mr. Muthukrishna straight that you called for further standards after you realised that Mr. Peiris had come into the scene? A. No. I know the Government Experts in the Handwriting Department. The Heads are trained in England. Mr. Peiris had a training in England.



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Q. You made no transmitted light photograph did you?  
A. No.

(Sir Lalitha reads a passage at page 36 of Osborne on Questioned Documents - passage beginning "If however a witness ..... standards", do you agree with it? A. Yes.

He reads passage at page 30 of the same author. "Purely ..... Opinion", do you agree with that passage? A. Yes.

He reads passage at page 370 of the same author. "No uncommon ..... opinion", do you agree with that passage? A. Yes.

10

Q. The methods employed in coming to your conclusion in this case are not scientific material is that so or not? A. They are scientific material.

Q. There are certain elementary methods which have not been noticed - I mean a tick in front. There are certain things that you noticed which are not existent. You have no practical training abroad?  
A. No.

20

Q. You did not take any transmitted light photographs? A. No.

Q. The photographs that you took are some larger and some smaller? A. Yes.

Q. You have no knowledge of photography yourself?  
A. No.

Q. The photographer is not a photographer who would be called a photographer of documents? A. He has had some experience in document photography.

Q. The enlarged photographs are in fact proved?  
A. They are not proved in particular documents.

30

Q. What is the diameter to which a photograph should be enlarged? A. 2 to 4.

Q. These photographs are neither 2 to 4? A. No.

Q. They are not enlargements to the same scale?  
A. No.

Q. Actually the photographs do not contain a scale at all? A. No.

Q. For a person to practise as a handwriting expert there is no qualifying examination as such?

A. No.

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Q. You did not give your mind to the kind of pen that was used until the question was put to you in Court? A. No.

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Q. On a number of points which I shall make now you have disagreed. You have disagreed with Brewster, Osborne and the Criminal Law Journal? I want to put it to you straight Mr. Muthukrishna that in these circumstances you are not entitled to call yourself an Expert in handwriting?

No. 45

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A. I say that I am an expert in handwriting.

D.Muthukrishna.  
Cross-  
examination  
- continued.

Q. Now Mr. Muthukrishna I want to ask you this - coming to William Fernando's signature you say you are entitled to be considered an expert in handwriting - you were given in regard to William Fernando's signature a number of signatures on cheques? A. Yes.

20

Q. Can you give me one authority from any standard writer that it is safe to compare signatures on cheques with a signature on a Last Will? A. No one has mentioned anything to that effect.

Q. Mr. Muthukrishna the five standard signatures that were given to you are R40a to R45a, is that correct? A. Yes.

Q. They are all cheque signatures? A. Yes.

Q. Three are signed on one day - that is 30/4/1951? A. Yes.

30

Q. One is dated 5/6/1951 and the other is dated 19/2/52, is that correct? A. I cannot say off-hand about the date.

Q. What was given to you were three on one day, one on 5.6.51 and one in 1952, that is correct?

A. Yes.

(Passage read to witness Brewster at page 435)  
"Signatures ..... light", do you agree with that passage? A. Yes.

40

"Formal Signatures with formal signatures ..... success" do you agree with that passage?  
A. Yes.

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D.Muthukrishna.  
Cross-  
examination  
- continued.

Q. Now a Will and a Deed would be a document so far as signatures are observed of a particular class?  
A. Yes.

Q. Cheques would be of another class? A. They too are formal signatures. They are in the same formal class but of a different class.

Q. Informal writings would be of another class?  
A. Yes.

Q. Did it strike you Mr. Muthukrishna when these cheques were given to you - did you give your mind to the fact that it would be a signature on a cheque book containing 100 leaves or 50 leaves or 5 leaves, did that idea cross your mind? A. No.

10

(Shown cheque book of 100 leaves P35) If a person has to put his signature in the place which is marked with an arrow in P35, will such signatures be different from a signature that he will put in a deed or a Will? A. It would be slightly.

Q. In a Will or a document you have a flat piece of paper? A. Yes.

20

Q. You can rest your hand on that flat paper?  
A. Yes.

Q. That idea never crossed your mind? A. No.

Q. And this idea of Brewster would show some difference in the signature as compared with the signature on a Last Will or a deed? A. very very lightly.

(Page 28 of Osborne put to witness) "As stated above ..... general", is that correct? A. Yes.

(Vol. 32 Journal of Criminal Law at page 243) "In addition to ..... drop", you agree with this passage? A. Yes.

30

Q. Can you give any case where a questioned signature on a will or a deed has been compared with the signature on cheques? A. Page 28 of Osborne - Questioned documents. Those three are grouped together.

Q. In that passage the reference is to the fact that they can have a regular mix up? A. Yes.

Q. Can you give me any passage from any authority where an expert has compared the signatures on a

40

Last Will or a deed with signatures on a cheque?  
 A. I have no case.

Q. You have asked for no further standards with regard to William Fernando's signature? A. No.

Q. Did it strike you that these signatures were signatures on a cheque what you had to give a verdict on was on a Will and that you should ask for further signatures on Wills? A. It did not strike me.

10 Q. But on 3.3.1954 you did look at some standards other than that of cheques? A. Yes.

Q. And they were on documents like Wills and deeds?  
 A. I would not be able to identify what sort of document.

Q. Did you ask for them? A. No.

Q. Without your asking they were given to you?  
 A. Yes.

Q. That was also after 3.4.1954? A. Yes.

20 Q. So that after 3.3.1956 with regard to Mr. Vethecan's signature you got what you had asked for 6 months earlier? A. Yes.

Q. And with regard to Mr. Fernando unasked you got some signatures of standards appearing in two of the last wills? A. Yes.

Q. Are you aware Mr. Muthukrishna that Mr. Fernando's cheques have been returned by the bank about the time that this impugned Will signature was made, are you aware of that fact? A. I heard so.

30 Q. When did you hear about it? A. When somebody was being examined in Court.

Q. That fact could not by any means alter your opinion of 1955 September? A. In the absence of those signatures I would not be able.

Q. In other words the fact that a man's cheques have been returned by a Bank Clerk that is no circumstance which would assist you to make an opinion? A. Without those signatures I cannot say so.

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D.Muthukrishna.

Cross-  
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 - continued.

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Cross-  
examination  
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Q. You can take it from my reference to page of the evidence, cheques of 11.4.50 and 27.6.51 have been returned because the signatures differed, I suppose a handwriting expert claims to be able to express an opinion in a language he does not know?

A. Yes.

Q. For instance Egyptology is one that an expert can express an opinion with regard to handwriting although that person had no knowledge of it?

A. Provided he familiarised with the characters.

10

Q. I take it that applies to people like Brewster, Osborne etc.?

A. Yes.

Q. I think you said on the last day authorities Brewster and Osborne have passages inconsistent one with the other?

A. One is inconsistent. They gave once both aspects of the same question.

Q. It is therefore not right for you to say that an authority like Brewster or Osborne gives passages one inconsistent with the other in their Text Books?

A. It gives both views.

20

Q. What you say is that the opinion of Brewster may be directly opposite to the opinion of Osborne in the same aspect?

A. Yes.

Q. But Osborne in his book does not give trifling views?

A. He does.

Q. I don't suppose you can claim to give an opinion with regard to a Chinese signature yourself or with regard to a Russian signature?

A. No.

(Shown report R65). In it you say that in regard to the letter Nāyanne in the standards, the vowel stroke is disjunct.

A. The vowel stroke is disjunct. In the one dated 5.6.51 R43a it is disjunct. In the one of 30.4.51 R41a it is disjunct. In the impugned signature it is not disjunct.

30

Q. Now Mr. Muthukrishna your opinion is utterly wrong for the reason that in R42a it is not disjunct?

A. It is disjunct to the extent that it is not continuous.

Q. Is it disjunct?

A. It is in contact. It is not disjunct.

40

Q. To that extent it is erroneous?

A. Yes.

It is not disjunct in R44a. (Shown R42a), it is written continuously. It can be written continuously (Shown R42a).

Q. The word 'Nayanna' may have been written continuously or may not have been written continuously to be fair by you and me? A. It may or may not have been written continuously.

(Shown R44a), Q. The alapilla and the vowel may not be considered to be written continuously? A. Yes.

(Shown R40a), Q. The alapilla or the vowel in the 'Nayanna' may or may not have been written continuously? A. Yes.

Q. Mr. Muthukrishna with regard to your opinion in R65 the first matter in the signature that you make a point of is "a difference may be observed if the 'Nayanna' in its relation to the alapilla is noticed. In the standards the vowel stroke is disjunct"? A. It is erroneous in the sense that the nayanna has not been written continuously. In some standards given to me they are disjunct and not written continuously. In the three cases referred to above they are in contact. In the signature on the Will it is not disjunct and it is continuous.

Q. Were you aware Mr. Muthukrishna that when you gave evidence in chief you did not make any reference to the 'nayanna'? A. I was not aware before.

(Counsel marks P36, copies of the photographs of the specimen signatures of S.W. Fernando, specimen F3 which is the same as R63).

In F3 it is in the form of the letter 'M'. In the impugned signature it is in the form of letter 'M'. In F2, F4, F6, F7, they are of a different shape. In F8 there is a stroke in the shape of that figure '3'. That is with regard to 'nayanna'.

(Mr. Navaratnarajah wants Sir Lalitha to state from where the specimen signature had been taken. Sir Lalitha states that, F3 is R63 - a proxy of 24.5.1944. F4 is R64 the signature on a proxy dated 1948. F2 is the signature on P12 the signature of William Fernando in the letter sent by him handing over possession of the properties to Evelyn. Sir Lalitha states that P12 is a document which was referred to by Nancy Catherine as being given to her by her husband when she gave up possession.)

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(Mr. Navaratnarajah objects to the signature on P12 being taken into consideration as a standard signature as there is no proof that that is the signature of the deceased Fernando. He does not state that P12 was signed by him. He can identify that as the signature of the deceased. Mr. Navaratnarajah objects to this document being shown to the witness. I uphold Mr. Navaratnarajah's objection and F2 will not be taken into consideration as a specimen).

10

F5 is the signature on document P2. It was a letter sent by the deceased to the village headman. (Mr. Navaratnarajah objects to the production of this document since there is no proof that P2 is that of the deceased. I uphold the objection and rule out F5). F6 is the signature on the Last Will attested by Mr. Felix de Silva R34. F7 is a signature on document P8. F8 is the signature on R30.

The first letter in the signature 'ayanna' - In my report I say that the commencing stroke of the 'ayanna' shows a firm downward sloping movement. In F3 of 24.5.44 and F4 of 1.9.48 you find the commencing stroke of the 'ayanna' which is the head of that letter showing a downward movement.

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Lunch adjournment.

Sgd. V. Siva Supramaniam.  
A.D.J.

Resumed after Lunch.

D.Muthukrishna - recalled - sworn.

Cross-examination continued.

30

In F3 and F4, the 'ayanna' it is an angular contrary movement in distinction to the firm downward sloping movement. In F3 the 'ayanna' is triangular body shaped and in F4 it is triangular body shaped. In F7 and F8 it is triangular body shaped. Shown in F1 P36 the 'ayanna' is not disjunct but continuous. It is so in F5. It is so in F7. In 'Viyanna' there is a vowel stroke which is called the 'ispilla'. If you take 41A the ispilla there is no parallel to the base. If you take F4, you cannot say whether it is parallel to the base. It meets the body of the Vayanna. (Shown an instrument called the Parallel Ruler), I do not know how it is used. In R44a, the ispilla of Vayanna does not end

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parallel to the upstroke in the standard R44a. In F4 it is not parallel to the upstroke. The next letter 'liyanna' I make no comment at all. In F3, F4 and F7 the terminal stroke is brought up to the head of the 'liyanna'. In the impugned signature you find the same feature. F6 is a genuine variation. The 2nd letter 'alsayanna' has also not been commented upon by me. The short shoulder of the 'alsayanna' is seen in F7 and F1. The almayanna I have not commented upon. The almayanna in F3, F4, F6, F7, F8 is similar with my standards. (Shown document P7), the 'yayanna' in the first line there is a hook. In the other 'yayanna' on the first line there is no hook. In the 4th line there is no hook. In the 8th line there is no hook. (Shown letter P6 also written by William Fernando to the daughter), in line 2 and line 1 there is no hook. In the 4th line I cannot say whether there is a hook. There are two yayannas in the 4th line and the 5th line which are completely different. The feature of the hook which I referred to as the vowel vary is absent in the other 'yayannas'. I do not know what a Rakaranasaya is. (Shown a Sinhalese Alphabet). I say in R65 the commencing and terminal heads of the 'payanna' in the standards is found to be much closer to each other than the unusual distance noticeable in the Will signature. I have enlarged R48, but the standard signatures are not enlarged to the same scale as R48. I am not in a position to tell His Honour how many times larger R48 is to the standard scale. The enlargement in the impugned signature naturally shows a wide aperture. Comparing F6 which is in the same scale as F1 the impugned signature in the document marked P36, the aperture does not show any appreciable difference. (Shown F8), that aperture or opening in the feature which I mentioned is decidedly narrower in F8 than in the other ones. I have not heard of a Luminex Microscope. (Witness looks at the Luminex Microscope). The point that I made with regard to the aperture cannot be made if one considers F6 and F8. I say in my report that that vowel stroke exhibits either a slight ending curve before or an inward tick. I saw a bulb formation in certain of the standards. In F3 there is no bulb formation. In F4 there is a bulb formation. In F7 there is a Y formation. It is different from the others. It is different from F6 or my standards R40, R41a, R42. In F3 the commencing tick is continued from the upstroke in F3 and in F4. It is a perfect circle. The letter ' prayanna' is written in two ways in the specimens. In F4 it is not

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squarish. It is elongated. F6 is again different. It is more or less squarish. In the impugned signature the papilla stroke on the last letter is going up. It is so in F3 and F4. (Shown P6 and P7), P6 'meeta thatta' and P7, 'thatta' the thatta is entirely different from the thatta in P7. With regard to the signatures of William Fernando, my signature and the signatures on P36 are from 1944 up to 1953. There are many variations in the signatures.

D.Muthukrishna. Cross-examination - continued.

Q. After a consideration of these variations, would you be in a position to say that it is difficult to express an opinion with regard to the Sinhalese signature? A. No. In the declining years of a person's life a difference of a year or two may make a good difference in the writing habit, but the difference in writing habit 20 or 30 years may not be very evident. One is dated 1944 and the other is dated 1948. They show a difference in writing habit which is not evident after 1950. Now from 1950 onwards a certain feature is visible in the writing habit. This feature or features is not visible in the Will signature, but there are certain similarities between the old signature 1944 and 1948 in individual aspects. With regard to the Sinhalese signatures too there was nothing from the technical point of view to show either a tracing, erasure or any disturbance of the fibres in the texture of the paper. With regard to the Sinhalese signature, William Fernando - there is nothing on the technical side to show it is a forgery.

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Q. You have mentioned certain dis-similarities in the formation of the letters in the signature? A. Yes. Some of them have now found to be non-existent. There are many similarities in the standards as in the impugned signature. It is from the particular similarities or dis-similarities that one tries to find out the existence or the non-existence of a writing habit.

Re-examination. Re-examined.

Passage read out to witness from Brewster at page 431 commencing "Photographs are not always necessary ..... to be formed", I agree with this contention.

40

I referred to certain characteristics which I found in the standard signatures R46a and R45a which

I stated were not to be found in the disputed Will signature. I have examined the signatures of C. Vethecan appearing in the document P24 namely V2 to V22 after the last date of trial. Those signatures show a number of variations. Despite the variations in those signatures I have been able to find out identifying characteristics in V2-V22.

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- continued.

10 (Counsel reads out passage at page 250 of Osborne on Questioned Documents commencing with the words "No set of rules ..... under examined"), I agree with this passage.

20 First of all the cross bar of the letter "T" is used to form the down stroke of the letters 'H'. That feature is found in all the standard signatures. Secondly "T" is formed with a down stroke. Osborne at page 265 refers to the importance of the letter "T" as an identifying characteristic. Thirdly the 2nd "E" in the word "Vethecan" is not formed with a continuous movement. In other words the E & C are disjunct. They are not continuous in movement. In V11, V12, V13, V14 and V21, there is a pen lift after the 2nd letter "E". In V7 the final part of the letter "E" stops at the same point at which the pen has commenced the "C", and there is a blur of ink. The particular letter "E" after the initial letter "V" is never written continuously. This can be seen in V7, V8, V9, V13, V18 and V20 very clearly. In the others it is merged. It gets mixed up with the commencing point of the remaining letters and it is not clearly visible. Further

30 the full stop after the initial letter "C" is always to the right of the letter "C". In V4 the full stop has been placed in the letter "V". In V9 and V15 the full stop has been placed in the very triangular point of the letter. In V21 the dot is on the final ending part of the letter.

Further Hearing on 31.5.56.

Sgd. V. Siva Supramaniam.  
A.D.J.

31.5.56

40 Appearances as before save that Mr. Adv. V.C. Gunatilleke also appears with Sir Lalitha Rajapakse for the petitioner.

D. Muthukrishna - Recalled - Sworn.

Re-examination continued.

The signatures marked V12-V22 are subsequent to 7.9.50.

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D.Muthukrishna.  
Re-examination  
- continued.

Q. Look at the first letter "C" in everyone of the signatures V12-V22 and tell us whether you notice a tick at the end of the final part of the letter "C"?  
A. Yes.

Q. That you say is the fifth identifying characteristic you have noticed in the signatures V12-V22?  
A. Yes.

Q. The fifth characteristic you refer to concerns the first letter "E" in the signature of Vethecan in V2-V22? A. Yes.

10

Q. What is that characteristic? A. In the admitted signatures the first letter "E" is a disjunct letter. It is not written continuously with the following letter "T" as seen in the disputed signature. In some of the admitted signatures the first letter "E" is in contact with the next letter "T" but never written continuously. That is the sixth identifying characteristic I have noticed in the admitted signatures. The seventh identifying characteristic that I have noticed refers to the cross bar of the letter "T". If the cross bar of the letter "T" is observed in the disputed signature it will be noticed to extend far to the right and actually the last part comes over the letter "C" whereas such an occurrence does not take place in any of standard signatures. In the standard signatures the cross bar of the letter "T" goes to form the letter "H".

20

By examining the signatures V2-V22 and also the other two signatures R45a and R46a I have noticed seven identifying characteristics.

30

Q. Are any one of those identifying characteristics present in the signature on the Will? A. No.

(To Court: One of the striking features in all the signatures is the cross bar of the letter "T" and the "H".

Q. Wouldn't a man who commits a forgery note that as the main feature and try to incorporate it in a forged signature?

A. In committing forgery sometimes it happens that your own formation creeps in and it is too late to rectify it. It is on those little mistakes that a forgery is detected.

40

Q. You can write another incorporating that feature? A. That is so.)

Q. Which of the signatures exhibit greater muscular control, the disputed signature or anyone of the signatures V2-V22 and the signatures R45a and R46a?  
 A. There is a greater degree of continuity in the disputed signature.

In regard to the number of identifying characteristics I refer to a passage in Osborn at page 232 on Questioned Documents. (Witness reads the foot-note on page 232).

10 I was asked whether an expert should be familiar with the language to express an opinion in regard to the genuineness or otherwise of handwriting in that language. I refer to Brewster on Contested Documents and Forgeries, page 106. I was asked as to whether transmitted light photographs were necessary to express a view on the genuineness or otherwise of handwriting. It is not always necessary. It is used only to show retouching. I cite a passage in Osborne at page 335. Direct light  
 20 Photography and transmitted light photography would almost be the same.

I was questioned about the letter "v" appearing in the disputed signature. My photograph R47 shows that there is a break in one arm of the letter "v". I examined the signature in the Will itself in Court. I told Court that in that signature there was no such break in the arm of the letter "v".

30 Q. Can you explain as to how this error crept into the photograph? A. All things expand on heating. A Photograph contains the plate and the two processes of producing a photograph will be the dipping of it first into a pan of cold water and later into a pan of hot water both containing certain solutions. If this expansion is uniform all over the photograph will not be distorted in any way, but if the photograph or plate contained any microscopic element or dirt or grit and this expansion took place,  
 40 the expansion will not take place at the same speed where the grit obstructed the expansion and a break might occur.

Sgd. V. Siva Supramaniam  
 A.D.J.

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D.Muthukrishna.  
 Re-examination  
 - continued.

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No. 46

V. GURUPATHAM

Respondent's  
Evidence

V. GURUPATHAM - Affirmed - P.C.1341 - Paiyagala  
Police Station.

No. 46

V.Gurupatham.  
Examination.

In September 1952 I was stationed at Mount Lavinia. I knew the deceased S. William Fernando. He was putting up at Kaldemulla. He made a complaint to me on 8.9.52. I recorded that complaint.

(Mr. Navaratnarajah states that a certified copy of the complaint has already been marked as R13)

10

I read and explained the complaint to him. I have made a note of it. He signed the Information Book in my presence.

Cross-  
examination.

Cross-examined.

I am not personally aware of his daughter's name. I do not know whether the daughter is Dulcie Charlotte Perera or not. I have passed the house of S. William Fernando when going on patrol. I cannot recollect now the Methodist Church.

20

Q. In other words, whether 396 Station Road bungalow is behind the Methodist Church at Laxapathiya or not you cannot personally say? A. I cannot recollect. I may have seen the Methodist Church but I cannot recollect now.

Q. Do you recollect the Methodist Church?  
A. I cannot remember.

Re-examination: Nil.

Sgd. V. Siva Supramaniam.  
A.D.J.

30

No. 47

A.W. Joachim.  
Examination.

No. 47

A.W. JOACHIM

A.W. JOACHIM - Sworn - Inspector of Police -  
Kalutara North.

(Shown R23) This is in my writing. It is signed by me. I have brought to Court all the Information Books relating to the entries made on 22nd, 23rd and 24th February, 1954.

Cross-examination: Nil.

Sgd. V. Siva Supramaniam  
A.D.J.

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No. 48

M. WIJERATNE

MERVIN WIJERATNE - Sworn. 30. Photographer.  
Colombo.

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Evidence

No. 48

M. Wijeratne.  
Examination.

10

I have taken Photographs of documents for Mr. Lawrie Muthukrishna for about five years. During those five years I would have photographed fifty documents. Those photographs were meant for use in Court. (Shown R40a, R46a, R47 and R48, R63 and R64, R34a and R9a). These Photographs were taken by me. These photographs were taken in the Court premises. I produce R45 a photograph of the affidavit filed in Case 14666 and R46 a photograph of the Last Will No.1984, dated 21.12.48.

(Mr. Navaratnarajah states that R45 and R46 have been referred to at page 330 and that he has marked certified copies. He now produces photostat copies of the documents.)

Cross-examined.

Cross-  
examination.

20

I am running my own studio, Jonathan & Co. Mr. D. Muthukrishna gave me instructions to take these photographs. He asked me to photograph the signatures and make enlarged copies. Those were the instructions he gave me.

Q. Did he give you instructions with regard to the method of taking document photographs? A. No.

Q. Do you know that there is a big difference between document photography and portrait photography? A. There is no difference.

30

Q. Can you tell me how you obtain a soft negative in the case of a document photograph? A. A soft negative can be made whether it is document or portrait.

Q. Do you know how to obtain a soft negative of a document in document photography? A. A soft negative can be made out of a portrait or document.

Q. Have you studied document photography at all? A. I haven't.

40

Q. Have you studied the art of taking document photographs? A. I have not made a specialised study of it. I used a Rolleiflex camera to take the photographs.

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Evidence

No. 48

M. Wijeratne.

Cross-  
examination  
- continued.

Q. That is the ordinary camera that is used to take portrait photographs? A. For document photography there is a separate lens.

Q. Whose hand or whose fingers are shown in the last page of R46? A. They were the fingers of the person who assisted me and held the document. I get somebody to hold the document firmly against the wall and photograph it. In that process the fingers also would be photographed. I have no specialised knowledge of document photography.

10

Q. If you take R45 you find on the last page somebody's two fingers holding that paper again which you photographed? A. Yes..

Q. In other words, you are a portrait photographer? A. Yes.

Q. And you have taken, as you take portrait photographs, photographs of documents also in the same way? A. Yes.

Q. And when you want to have it steady you ask somebody to hold the document and sometimes part of the fingers also come in? A. Yes.

20

Q. Did you take these photographs of these documents with a vertical copier. Have you heard of a thing called vertical copier? A. No.

Q. Do you use a special document copying apparatus when you take document photographs? A. No.

(Shown R46a) This is a photograph I have taken of Vethecan's signature. The thumb also has come in of the person who held it.

Q. Do you ever use a spirit level to adjust the level when you take a document photograph? A. It is advisable but I did not use it.

30

Q. Do you know that in taking a document photograph, if you do not use a spirit level there is distortion? A. It need not necessarily be distorted. I was not asked by Mr. Muthukrishna to make these enlargements to any particular scale. Mr. Muthukrishna was present when I took these photographs.

Q. Do you know whether the use of an ordinary camera is not helpful in taking document photographs?

40

A. Yes, an ordinary camera is not helpful

Q. You therefore agree that the ordinary camera is not of much use in taking a document photograph to be accurate? A. An ordinary camera hasn't got the correct lens.

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Q. Have you a ground glass screen on your camera?  
A. Yes.

Respondent's  
Evidence

Q. Have you a microscopic covering glass attached to it? A. No.

No. 48

10 Q. Do you know why a microscopic covering glass is necessary to take document photographs?  
A. I do not know.

M. Wijeratne.

Cross-  
examination  
- continued.

Q. If you take a photograph of a document with the ordinary camera and not with the special apparatus that I mentioned, you cannot get in all the minute details of a signature? A. For document photography we use a close up proxa attached to the lens which gives a focus within about 18 inches.

(To Court: Q. Can you get all the details in that way? A. Yes.)

20 Q. Your enlargements, they are not of the same degree of magnification? A. They are not done to any particular scale.

Q. They are not of the same degree of magnification?  
A. Yes.

Q. You used no scale? A. No. I was not asked.

Q. If Mr. Muthukrishna had asked you to take it to a scale you would have taken it to a scale?  
A. Yes.

30 Q. You did not personally realise that taking a photograph of a document to a scale is important?  
A. No. I was asked to take some photographs and I took them.

Q. If the photographs are just enlarged, can you read the ratio of reduction of magnification?  
A. Unless it is done to scale it cannot be done.

Q. Without that you cannot work the exposure factor?  
A. Exposure factor does not come in at all.

Q. For each of these signatures how many exposures did you take? A. Sometimes one, sometimes two.

40 Q. When you took the photographs of the signatures, in so far as you were concerned one or two exposures were enough? A. Yes.



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Evidence

No. 48

M. Wijeratne.  
Cross-  
examination  
- continued.

Q. A commercial photographer will not waste too much time with the plate as long as he gets his object? A. Yes. I take wedding photographs. I take photographs of people.

Q. Particularly ladies want their faces touched up and you touch them up? A. Yes. I know the exposure meter. Different exposure meters work in different ways. I am used to a Western Master.

Q. That is the one for portrait photographs?  
A. No, not necessarily. (Shown an exposure meter) I do not know how this one works. 10

Q. You will admit that document photography is a technical process? A. Yes.

Q. It is not the same as the process of taking portrait photographs? A. It is the same.

Q. You focus the camera and the thing appears?  
A. Yes.

Q. Did Mr. Muthukrishna examine the impugned signature of C. Vethecan in your presence? A. I do not quite remember. A photograph is a faithful reproduction of the original. 20

Q. Did Mr. Muthukrishna tell you by any chance that there was an added stroke in the letter "V" of C. Vethecan before you photographed it? A. No.

Q. Did he say there was a pen lift at all? A. No. I took the photograph R47.

Q. Do you notice in the "V" an added stroke or pen lift? A. Yes. I did not notice it. I just took the photographs and gave it to Mr. Muthukrishna.

Q. Will you be surprised to learn that in the original of the photograph C. Vethecan this added stroke or pen lift in the "V" does not exist? A. I am surprised to hear it. 30

Q. Before you came into the witness box did you hear that it was not in the original? A. No.

Q. Until you got into the witness box today you never heard that in the original C. Vethecan this pen lift or added stroke in the letter "V" does not exist? A. I did not know about it. Mr. Muthukrishna did not speak to me about it. I do not remember whether he told me about this feature. He 40

last spoke to me about 1½ months ago. He spoke to me last month.

Q. Did he tell you that in the original the added stroke does not appear? A. I do not remember whether he told me that. He did not ask me for an explanation with regard to that.

Q. If the original does not contain the added stroke but your enlarged photograph contains it, you cannot explain it? A. I cannot explain.

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M. Wijeratne.

Cross-  
examination  
- continued.

10 (Lunch)

A.D.J.

31.5.56.

Trial resumed after Lunch.

Mervyn Wijeratne - recalled - Sworn.

Cross examination continued.

Q. Mr. Wijeratne you had the lunch interval in between, you must have given thought to your conversation with Mr. Muthukrishna - did you give your mind to any conversation with Mr. Muthukrishna?

20 A. No.

Q. You can take it from me I showed you a certain added stroke in the photograph, (Shown R51), that is a drawing made at home by Mr. Muthukrishna and he has shown that added stroke in red pencil - you can take it from me that Mr. Muthukrishna has examined the original signature and he says the added stroke is not in the original, now I want to ask you - you were the Photographer who took photographs of the documents for Mr. Muthukrishna? A. Yes.

30 Q. You knew that he gave evidence in Court?

A. Yes.

Q. Did he ask for explanation as to how the added stroke appears in the enlarged photograph R47 when it does not appear in the original? A. Ne never asked me.

Q. He never discussed that matter with you at all?

A. No.

Q. Mr. Wijeratne you have shown an enlargement in

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- continued.

R47, but it is not in the original, how did that come about, did he ask you? A. He never referred about that to me. He never asked me for an explanation.

Q. If the original does not contain that added stroke, but your enlarged photograph R47 contains it, there must have been some accidental or deliberate tampering of the negative? A. I cannot say.

Q. If the original does not contain the added stroke but your enlarged photograph R47 contains it, there is some mistake somewhere, is that so? A. I must see the original before I can say. (Original shown)

10

(Witness examines the original and states) - you can see it clearly if a magnifying glass is given. I see an added stroke. There is a little difference in the original. The portion marked in red in R51 can be seen to a slight extent in the original. If a magnifying glass is given one can see it better.

Q. Mr. Wijeratne in your Studio there are other people who work? A. Yes.

20

Q. Your negatives are left in the Studio and you go elsewhere? A. My negatives cannot be meddled about by other people.

Q. Do you know a thing like a retouching medium? A. Yes.

Q. If you take a pencil and scribble on the original it does not make an impression on the negative? A. It makes an impression. It takes a red pencil on the negative.

30

(Shown negative of P11)

Q. Mr. Wijeratne with a touching medium you can apply the touching medium on the emulsion surface - that is on the reverse side? A. Not the emulsion surface.

Q. That is not on the reverse? A. The reverse is the other side.

Q. If you take a pencil and write on the negative can you make an impression? A. It won't.

Q. But if you apply a retouching medium and apply a little on it then you can touch up? A. Yes.

40

Q. And that is what you do with regard to portrait painting? A. Yes.

Q. Do you after you take the photograph, do you ever put it in hot water? A. No.

Q. If any man in that witness box had told His Honour that a negative is put in hot water, he cannot know anything about photography?  
A. I cannot say.

Q. Actually you put that in cold water? A. Yes.

10 Q. With regard to portrait photography you put the negative in cold water for 5 minutes? A. Yes.

Q. But if you take document photography what do you do put it in ordinary water or do you put any other chemicals? A. There is no standard.

Q. Do you think Mr. Wijeratne that a negative can produce that added stroke if a speck of dust gets into the negative if it is put in hot water, do you think such a result can be produced? A. It is not possible.

20 Q. In other words, Mr. Wijeratne, a negative is never put in hot water and there is no chance of a speck of dust or dust getting into and producing a different result? A. No.

Q. You put it in hot water, then you take it out, then you put it in the developer and then it is developed? A. Yes. What I do is black and white work. I have no knowledge of the technical side of document photography.

30 Q. If the original does not contain this stroke but the enlarged photograph contains the stroke, it cannot be due to a speck of dust? A. If there is a speck of dust it will be shown at the spot.

Q. Then it must be some person can tamper with the negative, if wanted? A. It is possible for a man to tamper with the negative.

Q. Do you take an enlargement to size when an enlarged photograph differs from the original?  
A. Yes.

Q. So far as you are concerned you are not able to

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M. Wijeratne.

Cross-examination - continued.

Re-examination.

explain if there is any change how the change arose?  
A. No.

Q. Are there any other people other than you who have access to your Studio? A. There are workmen also in the Studio.

Q. You cannot say whether any workmen could have interfered with this negative? A. No workmen interfered with this negative.

Re-examined.

It is soaked in ordinary water. The temperature is below 70 degrees.

10

Q. Is there any liquid poured to the water?  
A. The temperature differs.

Q. What is the temperature of the liquid?  
A. Between 65 degrees and 70 degrees.

Sgd. V. Siva Supramaniam  
A.D.J.

Mr. Navaratnarajah closes his case reading in evidence R1 to R65.

No. 49

No. 49

20

Application to call evidence in rebuttal.  
31st May, 1956.

APPLICATION TO CALL EVIDENCE IN REBUTTAL

Sir Lalitha moves to call evidence in rebuttal - the evidence of Mr. Vernon Peiris a handwriting expert.

Mr. Navaratnarajah objects. He refers to Section 163 of the Civil Procedure Code. He states it is open to the plaintiff to place in the first instance all evidence necessary for discharging the burden that lies on him and thereafter ask the Court permission to lead evidence in rebuttal on the issues that the burden of proof would be on the Defendant. In this case the issues framed were whether the Last Will was revoked by the deceased. Clearly the burden of proving was on the petitioner. The only issue in the case was whether the deceased

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executed a Last Will No.474 of 4.6.51 in the presence of two witnesses and in the presence of the Notary. In regard to proof of handwriting that the Will has been signed by the deceased, Mr. Navaratnarajah cites 49 Calcutta page 235 at page 246. Evidence of Mrs. Evelyn Letitia Peiris at page He submits that Sir Lalitha wants to call the evidence of the handwriting expert for the purpose of proving that the Will was signed by the deceased. One cannot describe that as evidence in rebuttal. He is only seeking to confirm the evidence he had already led on the issue as to whether the Will was signed by the deceased or not. Mr. Navaratnarajah cites 20 N.L.R. page 481. 13 Chancery page 580. Section 166 of the Civil Procedure Code. 4 Chancery page 24 42 N.L.R page 409.

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Mr. Tudugala was cross-examined at page and Mr. Austin Peiris was cross-examined at page in regard to the evidence of a handwriting expert. The petitioner cannot say that he has been taken by surprise.

(Mr. Navaratnarajah states that he does not want any of the documents - photographs etc. - put to Mr. Muthukrishna in cross-examination by Counsel for the petitioner without objection by him to be formally proved. He admits their genuineness without proof).

Sir Lalitha submits -  
Is there any specific pleadings in this matter because one frames issues to focus the attention of Court on the grounds on which there is dispute. All that is here is a petition by the petitioner to prove a Last Will marked "A" and the objections filed by us in which we say that this Last Will of their's has been revoked. He cites Section 146 of the Civil Procedure Code. 8 N.L.R. page 229. He submits it is in effect evidence in rebuttal because the issue is split.

No time. Further hearing to be resumed tomorrow.

Sgd. V. Siva Supramaniam.

A.D.J.

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1st June, 1956.

Hearing resumed.

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Same appearances as before.

Application to  
call evidence  
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- continued.

Sir Lalitha states he is not making any further submissions and invites one to make an order of his application.

ORDER.

Sir Lalitha moves to call Mr. Peiris said to be a handwriting expert to give expert evidence in regard to the signatures of the testator and witness Vethecan on the Will in dispute in this case. He submits that he is entitled to lead this evidence in rebuttal of the respondent's case. According to him although issue No.2 is framed in the following terms:-

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"Did the deceased execute Last Will No.474 of 4th June 1951",

it really consists of two issues as follows:-

(1) Did the deceased execute the Will, and

(2) are the signatures of the testator and witness Vethecan on the said Will forgeries,

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and that although the burden on the first of these issues lies on him, the burden on the second is on the respondent and that he is, therefore, entitled to lead evidence in rebuttal on that issue.

He also submits that until witness Mr. Muthukrishna gave expert evidence on behalf of the respondent that the said disputed signatures were forgeries, there was no need or obligation on his part to call expert evidence in regard to the signatures and that the direct evidence he had led was sufficient for the purpose of proving the Will. In view of Mr. Muthukrishna's evidence he should be given the opportunity of placing before Court the evidence of another handwriting expert as such evidence will assist the Court to arrive at a decision on the matters in issue.

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He further states that the evidence he proposes to lead is not evidence of fact but only in regard to the inference to be drawn on facts already before Court.

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Mr. Navaratnarajah objects on the ground that this evidence should have been led before the petitioner's case was closed and that the petitioner has no right to call evidence in rebuttal.

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10 Quite apart from the form in which the issues have been framed the burden undoubtedly lies on the petitioner to establish that the Will was duly signed by the testator and the attesting witnesses. It was the duty of the petitioner to have led what-  
ever evidence - direct or indirect - that was avail-  
able to discharge the burden before the petition-  
er's case was closed and the respondent is called  
upon to meet it.

20 The question of leading evidence in rebuttal came up for consideration by the Supreme Court in a recent case still unreported, S.C.No.77/D.C. (Interlocutory) Colombo Testamentary 14141. In that case there was a contest for Letters of Admin-  
istration between two parties, the first respondent  
who claimed to be the sister and sole heir of the  
deceased and the second respondent, who claimed to  
be the widow of the deceased. The issues framed at  
the hearing were:-

- 30
- (1) Was the respondent lawfully married to the deceased?
  - (2) If the answer to issue No.1 is in the negative is the first respondent entitled to the grant of Letters?
  - (3) Is the first respondent an heir of the deceased?

40 Counsel for the first respondent after leading evidence on issue No.3 closed his case reserving his right to call evidence in rebuttal on the issues on which the burden was on the second respondent. No objection was taken at that stage to such right being reserved. Thereafter the second respondent led evidence in regard to her marriage with the deceased. After the second respondent's case was closed Counsel for the first respondent sought to lead evidence in rebuttal on issue No.1. The Supreme Court ruled against it and held that the burden on the first respondent of proving that she was the sole heir involved the burden of proving that there was no widow, and the second respondent's claim that she was lawfully married to the deceased had, therefore,



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Application to call evidence in rebuttal. 1st June, 1956. - continued.

to be negatived in the first instance and the first respondent's application to lead evidence in rebuttal, if allowed, would be giving the first respondent another opportunity of proving what she had to prove in order to succeed in her claim.

In the present case the evidence which the learned Counsel for the petitioner now proposes to lead in rebuttal is evidence which he could clearly have led before he closed his case. There is no question of the petitioner having been taken by surprise by the testimony of the handwriting expert called by the respondent. In fact the name of another handwriting expert Mr. MacIntyre has been included in the list of witnesses filed by the petitioner on 20th September 1954, and he had been summoned to give evidence on behalf of the petitioner. That witness was, however, not called. The name of Mr. Peiris now proposed to be called was mentioned for the first time on 12th March, 1956 after several dates of hearing.

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In my opinion the petitioner's application if allowed, will be in effect to grant the petitioner, in the words of Basnayaka C.J., -

"another opportunity of proving what she has to prove in order to succeed in her claim."

I, therefore disallow the application of the learned Counsel to lead evidence in rebuttal.

Sgd. V. Siva Supramaniam  
A.D.J.

Counsel agree that the Registrar of Lands who has been summoned to produce certain documents which have already been marked need not be called formally to prove those documents.

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Intd. ....  
A.D.J.

No. 50

Addresses to Court.  
(Not printed)

No. 50

ADDRESSES TO COURT  
(Not printed)

419.

No. 51.

JUDGMENT OF THE DISTRICT COURT

D.C.15908/T.

587.

J U D G M E N T

In the  
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of Colombo

No.51.

Judgment of the  
District Court.

28th September,  
1956.

10 Sellaperumage William Fernando (hereinafter referred to as the deceased) of Kaldemulla, Moratuwa, died on 22.2.54 leaving a widow, Nancy Catherine Charlotte Fernando (hereinafter referred to as the widow) and two daughters Millie Agnes de Silva (hereinafter referred to as the respondent), the only child by first marriage, and Evelyn Letitia Peiris (hereinafter referred to as the Petitioner) the only issue of the second marriage. On an application made by the Respondent, who produced in Court a notarial writing No.454 dated 13.5.50 attested by Felix de Silva, Notary Public, as the last Will and Testament of the deceased, in terms of which the Respondent had been appointed the sole legatee and executrix of his estate, Order Absolute  
20 in the first instance was entered on 14.5.54 admitting the said Will to probate. The Petitioner has now applied to have the said Order cancelled on the ground that subsequent to the execution of last Will No.454 dated 13.5.50, the deceased executed another Will No.474 dated 4.6.51 attested by D.A.J.Tudugala, Notary Public, by which he revoked all earlier Wills and directed that after payment of certain legacies and other charges, the residue of the property be divided equally between herself  
30 (the Petitioner) and the Respondent. If last Will No.474 dated 4.6.51 was the act and deed of the deceased, there can be no question that the earlier Will No.454 of 13.5.50 had been revoked by the Testator and the distribution of the estate of the deceased should be in terms of the latter Will. The Respondent challenges the genuineness of Will No.474 of 4.6.51 and states that it was not the act and deed of the deceased. The only question then for determination at this inquiry is whether  
40 last Will No.474 of 4.6.51 (which, for convenience sake, I shall hereinafter refer to as the Will) was the act and deed of the deceased

The deceased started life as a baas, but after his second marriage he went to India and did building contract work along with an European gentleman and became affluent. In January 1934 he gave the Respondent in marriage to one J.F.L. de Silva, who

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- continued.

was a British qualified Architect. According to the Petitioner, the Respondent was given a dowry worth about 1½ lakhs. In October the same year, the deceased gifted to the Petitioner, subject to a life interest in favour of the widow, all the remaining immovable property he was possessed of. According to the Petitioner, the property so gifted to her was worth about Rs.60,000/-. The Petitioner was only about 12 years of age at that time. There would appear to have been no immediate reason for that gift, but, according to the Petitioner, the gift was made on the suggestion of the Respondent's husband. According to the Respondent, however, the gift was made at the instance of the widow who feared that the deceased might gift further property to the Respondent and consequently insisted on his transferring all his remaining property to the Petitioner subject to a life interest in her favour and the deceased complied with her request.

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It is common ground that in 1940 the Petitioner eloped with one Peiris and got married to him contrary to the wishes of the deceased. Peiris was related to the Petitioner's mother and the deceased appears to have suspected that the elopement and marriage were with the connivance and approval of the widow. The marriage caused acute bitterness in the deceased's mind towards both the Petitioner and her mother. Soon afterwards the deceased left his residence at Kaldemulla and went to reside at Matale in an estate belonging to him known as Naugala Estate. The year during which the deceased again came to reside permanently at Kaldemulla is in dispute between the parties, but it is common ground that he was in Matale for a period of over ten years with the exception of a short period during which he resided in Nawinna. The house in which he had resided at Kaldemulla had been gifted by him to the Respondent and even after he had changed his residence to Matale the widow continued for a short time to reside in that house. According to the Respondent's evidence, at the instance of the deceased, she gave notice to the widow to quit that house and the widow thereafter went and resided with the Petitioner and her husband at Laxapathiya in a house which had been gifted to the Petitioner by the deceased subject to a life interest in favour of the widow. It is clear from the evidence that the main reason for the deceased moving out of his residence at Kaldemulla was his bitterness with the Petitioner and the widow in consequence of the elopement and marriage

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The Petitioner's case is that although the deceased had been angry with her at that time she had obtained his pardon and become reconciled to him shortly afterwards and specially after 1944 up to the time of his death she had been on cordial terms with the deceased, although the deceased continued to be angry with her mother till the end. The Respondent, however, produced in evidence a document R11 which, she stated, was a copy of a letter addressed by the deceased to the Petitioner. The copy had been given to her by the deceased. According to her, the copy was given in 1953. The letter itself is undated, but from the contents it would appear that it was written in or after 1946 because in 1946 by document R10 the deceased had made arrangements with Raymond & Co., in regard to his own funeral and had made the necessary payments. The Respondent had been instructed in regard to those funeral arrangements and R11 refers to those instructions. In that letter the deceased stated that neither she (the Petitioner) nor her husband should attend his funeral or disturb the arrangements he had made. I accept the evidence of the Respondent that R11 bears the signature of the deceased and was handed to her by him. Whatever the date of R11 may have been, it would appear that even in 1946 the deceased was not on cordial terms with the Petitioner.

On 1.2.40 the deceased executed a last Will No.268 attested by Aelian Samarasinghe, Notary Public, (R9) in terms of which he devised all his property, movable and immovable, to the Respondent and appointed the Respondent as Executrix of the Will.

On 16.8.41 the deceased entered into a Deed of Separation with the widow (P1). In terms of that deed, the deceased undertook to pay to the widow Rs.500/- at the execution of the document and a further sum of Rs.1,500/- immediately afterwards, which sum of Es.1,500/- the widow undertook to pay back to the deceased in the event of the widow "molesting or obstructing" the deceased. By the same document, the deceased undertook to pay a monthly allowance of Rs.25/- to the widow. The deed P1 was signed both by the deceased and by the widow. About six months later, namely, on 11.2.42, the deceased entered into an informal agreement (R8) with a lady named Marina Fonseka in terms of which Marina Fonseka agreed to be a faithful companion of the deceased and "look after him and his

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health and do all things in her power to please him and keep him happy". The deceased agreed to pay Marina Fonseka as remuneration for her services a sum of Rs.1,000/-. It is common ground that from 1942 until the death of the deceased Marina Fonseka lived with him and looked after him.

On 23.11.43 the widow filed plaint (R5) in an action in the District Court of Colombo No.820/D against the deceased praying for a dissolution of her marriage with him on the ground of his adultery with one Maria Aponso and for an order for permanent alimony. The deceased filed answer (R6) on 18.2.44 denying the allegations and prayed for a dismissal of the action and for judgment against the widow in the sum of Rs.1,500/- he had paid to her under the agreement Pl. The case was settled on 14.8.44 and the following consent decree (R7) was entered:--

"It is ordered and decreed, of consent, that the Plaintiff's action be and the same is hereby dismissed without costs.

It is further ordered and decreed that the Plaintiff do observe the terms and agreement No.591 dated 18.8.41 attested by T.Terrance Fernando and that neither she nor any person on her behalf would at any time hereafter endeavour to compel the Defendant to allow her any alimony or maintenance further than the sum of Rs.25/- a month provided in the said Agreement and that she will not nor will molest the said Defendant in any manner hereafter".

The Petitioner's case is that there were other terms on which the said divorce case was settled which were not incorporated in the decree. The Petitioner stated in evidence that the person who effected the settlement of the case was Victor Fernando, who was then the Headman of the area and who was a great friend and confidante of the deceased. According to the Respondent's case, however, Victor Fernando was more friendly with the widow and the Petitioner and her husband than with the deceased and the deceased had approached him to effect the settlement in view of his friendly relations with the widow and the Petitioner. The Petitioner in her evidence stated that the terms on which the divorce case was settled were as follows:--

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- 10 (a) that the monthly maintenance payable to the widow will be increased from Rs.25/- to Rs.50/-;
- (b) that some property will be given to the Petitioner's children;
- (c) that certain jewellery belonging to the Petitioner which was in a box with the Respondent would be returned to her; and
- 10 (d) that the deceased "will leave a last Will leaving the property to be owned by me and my step-sister, the Respondent".

The evidence of the widow as regards the terms of settlement of the case was as follows: (page 73):-

20 "The settlement was that Rs.25/- was to be increased to Rs.50/-, that he will write some lands to Dulcie's four children, that he will give her jewellery box which was with Millie. Rs.5,000/- was a subsequent term of settlement. That was the time that possession of the life interest was given to me although it had been promised earlier on P.12.

"At the time the settlement was spoken of by the headman he told me that my husband had promised to write his properties for both the daughters to get after his death".

The evidence of Victor Fernando on that point was as follows: (Page 55) :-

30 "I intervened and brought about a settlement. At that time he was paying maintenance to Mrs.Fernando at the rate of Rs.25/- a month. I settled by making him to increase it to Rs.50/-. There was a jewellery box belonging to his second daughter Mrs.Peiris at Colpetty. He agreed to give Mrs.Peiris the jewellery box which he said was in Colpetty. He also agreed to give possession of a land of his to Mrs.Peiris. He also said that

40 whatever he possessed at the time of his death he would take steps to see that the property went to both the daughters in equal shares".

The evidence shows that at some stage the allowance of Rs.25/- was increased to Rs.50/- and

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this was confirmed by the agreement P8 in October 1952. As regard the jewellery box, it is common ground that there was a box of jewellery belonging to the Petitioner with the Respondent and after the settlement of the divorce case the box of the jewellery was returned to the Petitioner by the Respondent on 15.8.44 (R36) on the instructions of the deceased. There was no property transferred either to the Petitioner or to her children. According to Headman Fernando, in 1949 or 1950 he went with the deceased to the house of Proctor A.V. Fernando as the deceased "was anxious to give some money to the Home for the Aged and he had a land at Matale which also he wanted to gift to the children of Mrs.Peiris". The evidence of Mr.A.V. Fernando, Proctor, on this point in the course of his examination-in-chief was as follows :-

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"Q. Did the deceased come to see you in connection with writing a deed?

A. Yes. He came with the retired village headman of Kaldamulla. He was the Headman at the time if I am not mistaken. I am not sure.

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Q. That was to execute a gift?

A. Yes, in favour of the children of Mr. and Mrs. Peiris with the life interest to Mrs. Peiris.

That was some property at Matale. They were fairly valuable properties, about 100 acres".

30

In cross-examination he stated -

"Victor Fernando and the deceased came to me in connection with the execution of a deed somewhere in 1949 or 1950.

Q. What was that Matale Estate?

A. Nawgala Estate".

But, there was no deed executed in favour of the Petitioner or her children even at that time though it was nearly five years after the settlement of the divorce case. If the deceased had in fact intended to donate any property to the Petitioner or her children, and if he went to Mr.A.V.Fernando's house for that purpose, one cannot understand why such a deed was not executed. Neither the village headman nor Mr.A.V.Fernando has given any explanation in regard to the failure of the deceased to execute

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the deed after going to the Notary's house for that purpose.

On the other hand, on 13.5.50 the deceased executed another last Will No.454 attested by Felix de Silva (R34) by which he again devised all his movable and immovable property to the Respondent and appointed the Respondent as his executrix. In this Will he stated that he had already made provision for his second daughter Evelyn Letitia Peiris nee Fernando (the Petitioner). Subsequent to the execution of the first Will R9, the deceased had entered into an agreement R10 of 14.3.46 with Messrs.A.F.Raymond & Co., Undertakers, in regard to the arrangements of his own funeral. The only object of the second Will of 1950 appears to have been to incorporate that agreement as part of the directions to the executrix in the Will. In other respects it was merely a confirmation of the earlier Will. It is significant that if, as stated by the Petitioner and her witnesses, the deceased had promised or intended to transfer property to the Petitioner or her children either at the time of the settlement of the divorce case or thereafter, he did not make any provision in regard to it in this Will. Even, if, for some reason, he had not been able to execute the deed despite his talk with Proctor A.V.Fernando, this was an opportunity where he could have given effect to his intentions. The only reasonable conclusion one can draw, therefore, is whatever the relationship was between the Petitioner and the deceased, the deceased in May 1950 intended that the Respondent should be the sole beneficiary of his entire estate.

It is necessary to examine the relationship between the parties after 13.5.50 to consider whether there were circumstances to induce the deceased to alter the dispositions contained in the Will R34. The Petitioner's case is that during the early part of 1951 when the deceased was still a resident at Matale an incident occurred which made the deceased displeased with the Respondent. According to Aloe Nona, who had been employed as a cook under the deceased at Matale, the Respondent and her children had gone for a holiday to Matale and were staying on another estate belonging to the deceased named High Walton Estate which was close to Naugala Estate on which the deceased himself as resident. There is a spring in Naugala Estate to which people go for bathing purposes. One day the Respondent and her children went to bathe

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at that spring accompanied by the Respondent's car driver named Banda. The spring was on a lower elevation and one had to go down to it from the path. The driver Banda held the Respondent's hand to assist her to go down to the spring. The deceased saw this from the house through a window and shouted "Look there the disgrace that is being done to me". On hearing the shout, she (Alo Nona) herself went up and saw the incident. The evidence of Alo Nona is corroborated by John Appuhamy, who was the driver under the deceased at that time. The deceased, according to these witnesses, found fault with the Respondent for her behaviour, but, according to the driver John, the deceased was, however, not annoyed with the Respondent over the incident as she kept silent when she was reprimanded by the deceased and thereby accepted that she had done a wrong. Sometime afterwards the deceased returned to Kaldemulla to reside there permanently. After his return to Kaldemulla, the deceased had a conference at his house at which were present the Respondent and four or five gentlemen. According to John, at the instance of the deceased, he had gone to Colombo and brought the Respondent to that conference. He was himself present at the conference. In his own words what happened then was as follows (page 203):-

"I brought Millie Nona and she took her seat under the portico. There were 4 or 5 other gentlemen who also took seats under the portico. Then the old gentleman said "Millie, that driver is not a good man. I will give you a good driver and also pay his hire". Then Millie Nona said "Father, in whatever way you may ask me I am not going to discontinue Banda driver".

Q. What happened after that?

A. Then he said "you go immediately and dress him in trousers" and asked me to take her away at once.

Q. Was the deceased pleased with Millie's reply?  
A. He got annoyed".

Alo Nona, the other witness who testified to this incident, stated as follows (page 166):-

"Lokumahatmaya also had told Millie Nona in my hearing to discontinue driver Banda. Then Millie Nona said "in whatever way you may ask me I will not discontinue driver Banda".

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Q. Do you know personally why your master asked Millie Nona to discontinue driver Banda?

A. Yes. He had told to my hearing in the Bungalow, as driver Banda is a young man he is not suitable for her to keep as a driver and asked her to discontinue him; he also said he will give her a driver".

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10 Both these witnesses could not give the year in which this alleged incident took place, but they were both agreed that it was three years before the death of the deceased. The deceased died in February 1954 and hence the alleged incident must have been in 1951. The Petitioner's case is that the deceased was thoroughly displeased and angry with the Respondent over her refusal to discontinue driver Banda and that was the reason (or one of the reasons) which induced him to execute another Will on 4.6.51 altering the dispositions contained in the earlier Will R34 and directing the distribution of the estate after payment of certain legacies to the Petitioner and the Respondent. If, in fact, the Respondent had given the deceased any cause of annoyance with herself, or if the deceased's relationship with the Respondent after May 1950 was not as cordial as it had been before, that certainly would be sufficient explanation for the deceased deciding to execute a third Will containing dispositions quite contrary to that contained in the earlier two Wills. The evidence led by the Petitioner in regard to the displeasure of the deceased with the Respondent in the year 1951 requires careful examination. According to the Petitioner's witnesses, the incident at the bathing place happened about four months before the deceased took up permanent residence again at Kaldemulla and the meeting under the portico was 2 or 3 months after his return to Kaldemulla. The displeasure should have been prior to June 1951 to induce the deceased to execute the Will in June 1951.

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40 The Respondent's case is that the alleged bathing incident and the subsequent meeting at Kaldemulla are entire fabrications by the Petitioner and her witness. It is submitted on behalf of the Respondent that the deceased did not return to Kaldemulla until after July 1952 and consequently the entire story is false and should be rejected. The year in which the deceased returned to reside permanently at Kaldemulla is, therefore, a material point of decision. For, if the deceased did in fact return after July 1952, then the alleged

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incidents in question should have taken place in 1952 and not 1951. In which case, that would not be a ground which could have induced the deceased to execute a Will in June 1951. I shall, therefore, examine the evidence in regard to the year in which the deceased returned to reside permanently at Kaldemulla.

The Petitioner stated, in the course of her examination-in-chief (page 6), that the deceased came to live at Kaldemulla in 1951. Her husband Peiris also gave the same evidence (page 223). The widow fixed the year as 1951 or 1952 (page 74). Victor Fernando, the headman, stated that as far as he could remember the deceased came to reside in 1950 (page 58). It is common ground, however, that the deceased did not return in 1950. Rev. Wikremanayake stated, in the course of his examination-in-chief, that the deceased came to reside in 1950, but he later corrected the date as July 1952. His evidence on the point under cross-examination was as follows (page 44) :-

"The deceased was living in Matale till 1952. I do not know the exact date he came to Kaldemulla. I went to his house one or two weeks after he came to Kaldemulla because I had written to him at Matale asking him to inform me when he came. He came about July 1952".

The Respondent's case is that the deceased returned to Kaldemulla only after the sale of Naugala Estate to a third party. The Respondent has produced in evidence a copy of the deed of sale (R31) which shows that the sale was on 25.7.52. The Respondent's evidence that the deceased returned only after the sale of Naugala Estate finds corroboration in the evidence of the Petitioner herself and the widow. Under cross-examination, the Petitioner stated (page 33) as follows :-

"Q. I put it to you he came to Kaldemulla in July 1952 after the sale of Naugala Estate?

A. I cannot remember the dates correctly. It may be so. He came to Kaldemulla after the sale of Naugala Estate".

The widow, in her evidence in cross-examination (page 80), stated:-

"In 1952 July he came to reside in Kaldemulla after the Matale Estate was sold".

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It was submitted, however, by learned Counsel for the Petitioner that in P22 a deed of sale in favour of the deceased of a property at Melbourne Avenue executed on 2.11.51, the deceased is described as Sellaperu-  
 mage William Fernando of Kaldemulla, Laxapathiya in Moratuwa and the deceased presumably had come into residence at Kaldemulla prior to November 1951. It was explained by the Respondent that even during the period he was residing at Matale the deceased described himself in all documents as of Kaldemulla in Moratuwa. For example, in the last Will R34, which was executed on 13.5.50 when he was admittedly a resident of Matale, he has described himself as William Fernando of Kaldemulla in Moratuwa. The Bill R37a attached to the agreement with Raymond & Co., (R37) and which is dated 14.3.46 is addressed to William Fernando, Nancy Villa, Kaldemulla, Moratuwa, although it has a footnote "If hearse has to run to Matale additional charge of Rs.5/- per return mile". No inference can, therefore, be drawn from the fact that in the deed P22 of November 1951 the deceased has described himself as of Kaldemulla, Moratuwa. I accept the evidence of the Respondent, corroborated as it is by that of Rev. Wikremanayake, the Petitioner and the widow, that the deceased came to reside at Kaldemulla from Matale in July 1952 and I find accordingly.

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If, therefore, the alleged incidents deposed to by Alo Nona and John Appuhamy did take place, they should have taken place long after the date of the execution of the Will of June 1951 and could not have been a reason for the execution of the Will.

Let us, however, examine the evidence in regard to the incidents themselves. The witnesses who testified to those incidents are John Appuhamy and Alo Nona, who corroborated each other. Peiris, the husband of the Petitioner, stated in his evidence in examination-in-chief as follows (page 223):-

"Q. What were the state of feelings between Mrs.de Silva and her father?

A. After he came to live at Kaldemulla he did not receive her with such cordial feelings as he had done before.

Q. How do you know and why do you say that?

A. My wife who was on visiting terms with the father used to come and tell me that her

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elder sister was behaving in such and such a way with the driver and her father's feelings had got hurt over that.

Q. Do you know personally the feelings the deceased had towards Mrs. de Silva?

A. Yes.

Q. Tell us what you know?

A. I knew personally that the deceased did not have the affection towards her which he had before and that Mrs. de Silva was friendly with the driver".

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Under cross-examination, he stated:-

"Q. Your wife told you that the deceased had mentioned to her that Mrs. Millie Silva was behaving in such and such a way with the driver Banda?

A. Yes. My wife told me that the deceased also had told me that".

But, the Petitioner herself did not in her evidence refer to any statement made by the deceased to her in regard to the conduct of the Respondent. The other witness who referred to driver Banda in the course of his evidence was Victor Fernando, who, in the course of his examination-in-chief, stated as follows (page 58) :-

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"One day when I was going with Mr. Fernando by car the car stopped near the house of the Respondent on the Galle Road. He sent some money and eatables by an old man named John to Mrs. Silva's house. Then I told him "You have stopped here; instead of stopping here as it is a short distance shall we go there". He said "I do not go there. I am angry with the driver.

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Q. Who is the driver? A. Driver Banda.

I did not ask him why he said it. It is not usual for me to ask for details. He did not go to Mrs. Silva's house that day".

In regard to the first alleged incident at Natale, I find it difficult to believe that the Respondent would have been so foolish as to conduct herself improperly in the presence of her children, the eldest of whom was over 15 years of age, and an ayah. It is still more difficult to believe that the deceased would have summoned the

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Respondent to a conference at which were present 4  
or 5 gentlemen and in the presence of them all  
made a request that she should discontinue the  
driver thereby implying that there was improper  
relationship between the driver and the Respondent.  
According to John Appuhamy, the deceased was not  
annoyed with the Respondent at Matale. In which  
case, if he felt disturbed about the relationship  
between the Respondent and the driver and if he  
10 did want to speak to the Respondent about it, would  
he not have spoken to her privately? I was not at  
all impressed with the evidence either of John  
Appuhamy or of Alo Nona in regard to the said inci-  
dents and, in my opinion, their evidence is false.  
On their own admission, these witnesses have reason  
to be annoyed with the Respondent. According to  
Alo Nona, she was employed by the Respondent after  
the deceased's death but her services were termina-  
ted abruptly. John stated that on the day after  
20 the death of the deceased the Respondent terminated  
his services and that he subsequently sent a letter  
of demand to the Respondent claiming arrears of  
salary from her. I was also not impressed with the  
evidence of Victor Fernando (corroborated though it  
is by John Appuhamy) that the deceased had told him  
that he does not visit the house of the Respondent  
because he was angry with the driver Banda. I ac-  
cept the Respondent's evidence on this point and  
hold that the whole story is malicious fabrication  
30 by the Petitioner and her witnesses in order to  
provide a motive for altering the dispositions  
contained in Will R34.

What then was the relationship between the de-  
ceased and the Respondent after May 1950 up to the  
time of the deceased's death. According to the  
Respondent's evidence, the deceased had, after her  
husband's death, always paid the rent of the house  
in which she lived in Colombo and in 1951 November  
bought a house at Melbourne Avenue in order that  
40 she may live there. She went into occupation of  
the house in March 1952 and lived in it free of  
rent. In January 1953 the deceased gifted that  
house to her by deed 605 dated 16.1.53 attested by  
P.E.S.Wijesekera, Notary Public. The fact that  
the Respondent lived in this house free of rent and  
that it was gifted to her in January 1953 are not  
challenged by the Petitioner. It is also in evi-  
dence that during the last period of the deceased's  
final illness the Respondent went and stayed with  
50 him at Moratuwa and that the deceased handed over

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to her the keys of his safe. The Respondent further stated that the deceased had given her presents of small sums of money at various times and produced in proof the counterfoil of a cheque dated 26.11.51 (R29a) in the handwriting of the deceased for a sum of Rs.160/-. These facts corroborate the evidence of the Respondent that the deceased was at all times very well disposed towards her and had no reason to be annoyed with her and I accept that evidence.

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Let us now consider the relationship that existed between the Petitioner and the deceased after May 1950. On 22.5.50, that is, nine days after the execution of last Will R34, the deceased sent letter P2 to Victor Fernando, the village headman. In that letter he refers to the fact that the Petitioner had written to him setting out her worries and that he had himself given thought to the matter and come to a decision that something should be done. He states that if money is given to the hands of the Petitioner it will not be available for use in the future, presumably because she will spend it. (It is in evidence that the Petitioner had sold some property gifted to her by the deceased in order to settle some debts). It was his intention, therefore to deposit some money for the benefit of the children with the Public Trustee in order that the children may be able to draw the money along with their mother after they come of age, but that the deposit would be subject to the condition that if they caused him any trouble during his lifetime the moneys would be confiscated by the Government. He concluded that letter as follows:-

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599. "Therefore I beg of you kindly to explain these matters to the mother and daughter after getting them to you or else by going to see them and let me have a reasonable reply. I am writing this as my time is passing on now. I have thought of this way. If they agree it will be done before another six months. Further delay will make this impossible".

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It is clear from this letter that after having executed a last Will whereby all his property, movable and immovable, would go to the Respondent, the maximum that the deceased was prepared to do for the Petitioner and her children was to deposit a certain sum of money for the benefit of the Petitioner's children with the Public Trustee. (The translation of letter P2 filed by the Petitioner has omitted

the reference to the Public Trustee. I have, therefore, instructed the Court Interpreter to file a correct translation of the document). It is significant that the deceased was not prepared to hand over that money to the Petitioner herself and the letter is the deceased's response to the appeal made to him by the Petitioner informing him of her worries. If the deceased had given a promise of providing for the devolution of his estate between both daughters equally at the time of the settlement of the divorce case or thereafter, there was no need at all for him to have sent letter P2 to the headman. The Petitioner stated in her evidence under cross-examination (page 32) that neither she nor her mother had at any time after the receipt of P2 asked the deceased to deposit the money to the credit of her children and that the letter P2 had been sent in reply to her letter to her father explaining her difficulties. She further admitted that the first time she received any moneys from her father after the letter P2 was in November 1952. (The evidence shows that November was an error for October 1952). She further stated that after the payments in November 1952 she did not ask the deceased for any financial help and he did not give her any. It is the Petitioner's case that particularly after the settlement of the divorce case in 1944 the deceased was on cordial terms with her and, according to the village headman Fernando, the Petitioner had prevailed on her mother to settle the divorce case and the Petitioner's part in effecting the settlement had reached the ears of the deceased who appreciated her conduct. If that evidence regarding the changed attitude of the deceased towards the Petitioner is true, one fails to understand why the deceased did not send a reply direct to the Petitioner in response to her appeal for help, but chose instead to address the Village Headman and ask him to explain the position to the "mother and daughter" and communicate to him their reply. The letter P2 would appear to be more consistent with the position that there had been no substantial change of attitude on the part of the deceased towards the Petitioner, but that he was prepared to give some help to her children.

The Petitioner stated in her evidence (page 6) that after her father's return to Kaldemulla in 1951, both she and her children visited him and that he was kind and affectionate to her. The Petitioner's husband too gave the same evidence and

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added that he too had visited the deceased during Christmas of 1951 and obtained his pardon. I have already held that the deceased did not return to Kaldemulla till 1952. Apart from the oral testimony of the Petitioner and her witnesses, there is no other proof from which one can draw an inference that between May 1950 and June 1951 there was a change of attitude on the part of the deceased towards the Petitioner. The earliest letter which the Petitioner was able to produce addressed to her by the deceased is dated 7.10.52 (P3). Rev. Wikremanayake, who was the Incumbent of the Moratuwa Parish, who was called by the Petitioner and who impressed me as a truthful, reliable and disinterested witness, stated in evidence that he spoke to the deceased about the Petitioner in September or early October 1952. His evidence given in the course of examination-in-chief was as follows (page 43):-

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"Q. Did you speak to the old gentleman, the deceased? A. Yes. I spoke to the deceased about his daughter. About September or early October 1952 I spoke to him. When I went to see him he was not very well. I took the opportunity of advising him to make his peace with God and man. I referred to the daughter, Mrs. Peiris. The conversation was in Sinhalese. He said with reference to that, "

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(In Sinhalese)

(All that I have made arrangements).

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Q. Referring to any particular time? A. No.

Q. Did he refer to the two daughters?

A. I was speaking to him about the daughter with whom he was displeased".

Under cross-examination he stated:-

"Q. You thought it was your duty as the chief Priest to bring about a reconciliation between father and daughter? A. Yes.

Q. The first person to whom you mentioned this conversation you had with the deceased was the Petitioner's lawyers?

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A. No. Immediately after that I knew there was a certain amount of anxiety and I told the Petitioner then not to worry as everything will be all right".

Peiris in his evidence stated that Rev. Wikremanayake did not have to speak to the deceased to bring about a reconciliation between the deceased and the Petitioner but I have no hesitation in rejecting his evidence as false. The evidence of Rev. Wikremanayake, which I accept, clearly shows that in September or October 1952 he had to speak to the deceased on behalf of the Petitioner.

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10 In fact, on 8.9.52, i.e. shortly after the deceased returned to reside at Kaldemulla, he made a complaint to the police (R13) in the following terms:-

20 "My legal wife Nancy Catherine Charlotte Perera is away from me for the last 12½ years. I pay her Rs.50/- as maintenance of my own accord. This is not an order from any Court of Law. She is now at Laxapathiya in Moratuwa with her female child aged about 26 years who is now married. The motive for our not being in terms of intimacy is my daughter Dulcie Charlotte Perera at the age of 19 years was given by my wife without my consent to a certain clerk at Moratuwa. She has been a helping hand to them without my knowledge. I received information today that she would come to my residence tomorrow and would sacrifice her life at my place. Hence I came to inform police. Her address at Moratuwa is 396 Station Road, Angulana, behind the Methodist Church at Laxapathiya".

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40 P.C. Gurupatham, who recorded the statement, stated in evidence that he knew the deceased and that the complaint in question was made by him. Village Headman Fernando too stated that he was aware of this complaint. It was submitted by Learned Counsel for the Petitioner that the address of the widow is wrongly mentioned in the complaint and that the Church at Laxapathiya is not a Methodist Church but an Anglican Church. He also pointed out that the name of the Petitioner is wrongly given in the statement. I accept the evidence of P.C. Gurupatham that he knew the deceased and the statement in question was made by him. Learned Counsel for the Petitioner further submitted that the complaint in question was directed not at the Petitioner but at the widow and that the relationship between the Petitioner and the deceased was cordial although he sometimes identified the Petitioner with the widow. But, the terms of the

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complaint R13 clearly show that the relationship between the Petitioner and the deceased could not have been cordial. He does not even want to acknowledge the Petitioner as his daughter but refers to her as the female child of his legal wife Nancy Catherine Charlotte Perera. Nancy Catherine Charlotte Perera is the maiden name of his wife and he refers to the Petitioner as Dulcie Charlotte Perera, giving her the maiden name of her mother. It is in evidence in the case that although the Petitioner's proper name was Evelyn Letitia, she was known in the house as Dulcie. The complaint R13 corroborates the evidence of Rev. Wikremanayake that in September or October 1952 he had to intercede with the deceased on behalf of the Petitioner.

The documents produced in the case show a change of attitude on the part of the deceased towards the Petitioner only in October 1952. On 17.10.52 the deceased entered into a fresh agreement with the widow (P8) by which he agreed to pay a sum of Rs.5,000/- to the widow and to continue the payment of an allowance of Rs.50/- a month. On 29.10.52 the deceased gave the Petitioner Rs.15,000/- by three cheques which the Petitioner invested on a mortgage in her favour (P9). The attestation clause of P9 shows that the three cheques in question were endorsed by the Petitioner in favour of the Mortgagor. It would appear from the letter P3 dated 7.10.52 addressed to the Petitioner that the deceased had by that date decided to give the Petitioner the money and he discussed in that letter the best form of investment. He also discusses the investment of Rs.15,000 in an undated letter P6. It is not unlikely that at the date which Rev. Wickremanayake spoke to the deceased he had already made up his mind to give this money to the Petitioner and to enter into the agreement P8 with the widow or had actually done so. That would explain his reply to Rev. Wikremanayake that he had already attended to everything. I am satisfied on the evidence that until about September or October 1952 there had been no change in the relationship between the Petitioner and the deceased and that not only the widow but the Petitioner also was at arms length from the deceased. A change in relationship could not, therefore, have been a motivating cause for the execution of a Will in June 1951 altering the dispositions contained in the earlier Will of 1950.

The Petitioner also produced in evidence two

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10 letters dated 11.11.52 and 18.11.52 respectively (P5 and P4) as well as an undated letter (P7) sent to her by the deceased. These letters show that the Petitioner was anxious to meet the deceased and the deceased was willing to meet her but without the knowledge of others. The letter P4 of 18 November is very significant. By that date he had already entered into agreement P8 with the widow and had given Rs.15,000/- to the Petitioner and yet even by that date the Petitioner does not appear to have been on visiting terms with him. Her evidence in regard to her frequent visits to the deceased during the period anterior to November 1952 and his kind and affectionate treatment on those visits is disproved by this letter. For, he states, "Daughter, as you are entreating me so much come between 7 and 8 p.m. on Friday before 8 o'clock. Don't tell anyone. If you come by cart the gate will be kept open". If the Petitioner had been on 20 visiting terms with the deceased and his relationship with her had been normal and cordial, what need was there for the Petitioner to entreat the deceased in November 1952 to allow her to visit him?

30 I find on the evidence that in June 1951 the attitude of the deceased towards the widow and the Petitioner was the same as before and that he was by no means well disposed towards them. I also find that between 1940 and the time of his death the deceased was very much attached to the Respondent and that at no stage was the relationship between them anything but cordial. Against this background, is the Will P11 a natural Will? Under the Will the following legacies are provided for:- Rs.5,000 to the widow, Rs.2,000 to the School for the Deaf and Blind at Ratmalana and Rs.1,000 to driver John. After the payment of the above legacies and the funeral, religious and testamentary 40 expenses, the balance estate is devised equally to the Petitioner and the Respondent. It is significant that in this Will there is no reference whatsoever to the agreement the deceased had entered into with Raymond & Co. in regard to his funeral arrangements - an agreement to incorporate which he had executed a special Will one year earlier. Is it likely that he would have omitted all reference to that agreement in a subsequent Will that he executed? Having regard to the complaint to the Police R13 on 8.9.52, is it likely that he would 50 have given a legacy of Rs.5,000/- to the widow in

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June 1951? Is it likely, having regard to the letter P2 of 22.5.50 and the complaint to the police R13 of 8.9.52, that he would have made the Petitioner a devisee of one half of his entire estate? Is it also likely that he provided a legacy to John but did not think of a legacy to Marina Fonseka who was looking after him? The period of service of John in May 1950 was only one year less than in June 1951 and yet he never thought of a legacy to John in 1950. During his lifetime he gave a donation to a Church at Moratuwa when he was approached by the priest and the wardens of the Church, but though he made other promises to the Church nothing materialised. On the evidence led in the case, there is nothing to show that the deceased was a man of a charitable disposition. In his two Wills, one dated 1940 and the other 1950, he never thought of providing for a legacy to a charitable institution. The provisions in question if considered by themselves, without reference to the background, are indeed most natural. Having regard, however, to the relationship that existed between the parties and the character of the deceased, as disclosed in the evidence, I am of opinion that the Will P11 is an unnatural one.

But, according to the Petitioner's case, the deceased had mentioned to several persons before his death that he had made provisions whereby both daughters would succeed equally to his property after his death. I shall now deal with the evidence of those witnesses. The witnesses to whom the alleged statements are said to have been made by the deceased are Victor Fernando, the Village Headman, Rev. Wikremanayake, Mr. A. V. Fernando, Proctor and Rev. Dhmamaloka Thero.

According to the evidence of the Petitioner and her husband Peiris, Victor Fernando had told them in 1944 and thereafter that the deceased had informed him that he will be executing a document which would provide for the succession to his estate by both daughters. They also stated that after the deceased's death Victor Fernando had told them that the deceased had executed such a writing. The evidence of Peiris at page 239 is as follows:-

"He (Victor Fernando) told my mother-in-law and wife that the deceased will be writing for the two daughters to get his property after his death in equal shares. He said that during the time of the divorce case and also afterwards and also he produced a letter to that effect.

Q. To the effect that the deceased would be leaving a writing by which his property would go to the two daughters equally after his death?

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A. No. By the letter the deceased had asked Victor Fernando with regard to his depositing some money in the name of my children.

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Q. Did you tell earlier that the deceased had given a letter to Victor Fernando to the effect that he would be leaving a writing by which his two daughters would take equally after his death?

A. If I said so it is incorrect. In the letter the deceased was telling Mr. Fernando that he was going to deposit some money in the name of my children.

Q. Did it strike you that the writing was a last Will?

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A. I thought that it would be a last Will or it would be a deed.

Q. Did Victor Fernando at any time tell you or your wife or your mother-in-law that the deceased had told him that he had executed such a writing?

A. I think that after my father-in-law's death Victor Fernando told us.

Q. Not before his death?

A. Both before and after.

Q. How long after his death?

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A. About a week or ten days after I think".

The Petitioner's evidence on this point was as follows (page 15) :-

"Q. When was the next occasion on which Victor Fernando spoke to you about this Will, as far as you can recall?

A. After my father's death.

Q. How long after your father's death?

A. On the day of the death of my father Victor Fernando sent me a message.

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Q. Sent you a message to the effect that your father had left a last Will leaving his properties to you and your sister?

A. That my father had left a last Will leaving property to both of us.

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17)

Q. Was your mother on the date of death of your father aware that the deceased had left his property to you and your sister by last Will?

A. Yes. My mother had known that my father had left a last Will leaving the properties for both daughters.

.....

Q. She was aware that your father had devised all his property both to you and your sister? A. Yes.

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Q. You had told her that? A. Yes.

She had become aware from the Headman as well as from Mr.A.V.Fernando. She had also become aware from Rev.Abeynaike and from Rev.Wikremanayake.

Q. This village headman had told your mother directly that your father had executed a last Will leaving the property to you and to your sister? A. Yes.

Q. How long before your father's death was that information given by the Village Headman to your mother?

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A. I cannot remember the dates.

Q. Apart from the village Headman's having told you on 2 or 3 occasions the village Headman had told your mother on several occasions about your father having left a last Will leaving the property to you and your sister? A. Yes.

I cannot say, I do not remember, on how many occasions the village Headman told my mother.

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The evidence that the deceased had told Victor Fernando that he had executed a document in favour of both daughters is not supported by the evidence of Fernando. Fernando's evidence given in the course of his examination-in-chief was as follows (page 56) :-

"He also said that whatever he possessed at the time of his death he would take steps to see that the property went to both the daughters in equal shares.

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Q. Did he say it only at the time of the divorce action?

A. After that Mrs. Peiris' mother used to go to Mr. Fernando on several occasions and worry him. On those occasions also he had sent for me and told me "have I not promised to give whatever I have to my daughters?", "please ask Mrs. Peiris' mother not to come and worry me". And I have been going and telling Mrs. Fernando this and warning her not to worry him.

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I retired as village Headman in 1951.

Q. The first occasion was during the divorce proceedings; can you remember an occasion when he repeated this statement?

A. After that as far as I could remember he said that about 1950 when his wife had gone and worried him.

This was before I retired.

.....

Q. Even after 1950 did he tell you the same thing when occasion arose?

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A. I cannot remember. He may have told me even in 1950. But I cannot be certain".

Under cross-examination he stated (page ) :-

"Q. Did he ever tell you at any time that he had executed a Will? A. No.

Q. Did he ever discuss with you any matter relating the execution of a Will by him?

A. No. He was telling me that he wanted to write these lands.

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Q. On how many occasions had he told you that he was going to write these lands?

A. About 7, 8, 10 times.

Q. When was the last occasion on which he told you that? How long before his death?

A. About six months prior to his death he fell ill. At that time several people came to treat him. At that time he said "I am not even free to die. I want my lands to be written".

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This incident took place in September or October 1953".



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Under further cross-examination, he stated  
(page ) :-

"I know Mr.Peiris

Q. Did he talk to you about what the deceased  
had done with his property after the death  
of the deceased? A. No.

"Dulcie did not speak to me on this matter  
after the death. Dulcie's mother did not speak  
to me.

Q. Did anyone speak to you after the death of  
the deceased on this subject? 10

A. No, except that I was served with a summons  
in this case and asked to give evidence.

Until I was served with a summons no one  
talked to me about what the deceased had done with  
his property?

It is clear from this witness' evidence that  
the deceased had at no time told him that he had  
executed a Will or other document by which the  
property was to devolve equally on both his daugh- 20  
ters after his death. In 1950 he had told him  
that he intended to write the property in order  
that it may devolve on both his daughters, but he  
had not so written even in 1953 about six months  
before his death.

The next witness to whom, according to the  
Petitioner and her husband, the deceased had ad-  
mitted that he had executed a document to enable  
both daughters to succeed equally to his estate  
was Rev. Wikremanayake, the incumbent of the Mora- 30  
tuwa Parish. It is common ground that the parties  
are all Christians and they resided within the  
Moratuwa Parish. The Petitioner stated under  
cross-examination as follows (page ):-

"Q. Do you tell us that Rev.Wikremanayake had  
told your mother that the deceased had exe-  
cuted a last Will leaving a property to you  
and your sister?

A. Yes, to me, to my mother and my husband.

Q. On how many occasions had he told you that? 40

A. Once.

Q. Or on more than one occasion?

A. After my father's death Rev. Wikremanayake

once told me that my father had told him that he had executed a last Will leaving his property to me and my sister.

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Q. That was the first occasion on which Rev. Wikremanayake spoke to you or to your mother about this last Will?

A. He may have told my husband earlier but it was after my father's death that he met me and my mother and told us about this Will. It was soon after my father's death. I cannot remember the date".

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The widow in her evidence-in-chief stated (page ) :-

"I know Rev. Wikremanayake. I spoke to him.

Q. What did you ask him?

A. He told me "Mrs. Fernando, do not fear. Mr. Fernando told me that whatever he has, he has written to his two daughters".

Peiris stated under cross-examination (page ) :-

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"Q. Did anyone else tell you after the death of the deceased about what the deceased had done with the property?

A. The Nilammahara Priest and Rev. Wikremanayake told me after his death.

Rev. Wikremanayake had told me once before the deceased died?

Q. How long before the deceased died?

A. I cannot say exactly, about 1952".

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The evidence of these witnesses is, however, not supported by the evidence of Rev. Wikremanayake, who, as I have already stated, impressed me most favourably and whose evidence I accept. Rev. Wikremanayake does not say that the deceased told him that he had executed a document by which he had arranged for both daughters to succeed to his estate. Nor does he say that he gave the parties any information after the death of the deceased. He spoke to the Petitioner soon after he spoke to the deceased in October 1952 and told her not to worry as everything will be all right.

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According to learned Counsel for the Petitioner, the principal witness on whose evidence he relies to establish that the deceased did state that he had executed a document in terms of which his

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property would devolve on both his daughters is Mr.A.V.Fernando, Proctor. Learned Counsel described his evidence as the sheet anchor of his case. Mr. Fernando is a Proctor who has been in practice in Panadura and Colombo for 32 years and is in addition a Justice of the Peace and Unofficial Magistrate. The evidence of a witness of his standing will not be lightly dismissed by any Court and deserves careful consideration. According to him, he knew the deceased and saw him in connection with a donation to a chapel. The deceased gave a donation of Rs.1,500/- and also made other promises which did not materialise. He also saw him in connection with the execution of a deed in favour of the children of Mr. and Mrs. Peiris, but that too did not materialise. Then he gave the following evidence in the course of his examination-in-chief (page ) :-

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"I knew that there were two daughters of the old gentleman, that is, the Respondent and the Petitioner.

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Q. Do you know whether there was any estranged feelings between them? A. Yes.  
They were not on terms.

Q. Did you know that the old gentleman was being worried about it? A. Yes.

Q. What did the old gentleman tell you in connection with the two daughters?

A. One day he told me that he had made provision for his two daughters equally to take effect after his death".

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In cross-examination he stated that he could not say what the relationship between the deceased and the Respondent was and that the deceased made the statement to him somewhere in 1952, after the donation of Rs.1,500/- for the chapel, about the provision he had made for the two daughters to get his property in equal shares after his death. In re-examination he stated that he had been to see the deceased on two occasions, once with Rev. Wikremanayake and on the second occasion alone, and it was on the second occasion that the deceased made the statement to him about the provision for his daughters. He fixed the date as after August 1952.

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Mr. Fernando claimed that he had done professional work for the deceased but could not remember when it was. It was about 20 years ago. That

professional work was the attesting of a deed of sale of a land at Lunawa by the deceased to a club. He had also attested a transfer of the remaining portion of the land to the deceased's nephew. The evidence of Mr. Fernando does not, however, show that there was any special reason for the deceased mentioning to him that he made provision for both daughters. He was not one who had interceded with the deceased on behalf of the Petitioner or the widow. To Rev. Wikremanayake, who saw the deceased in September or October 1952 with the specific purpose of bringing about a reconciliation between him and the Petitioner, the deceased did not vouchsafe the information that he had made provision for both daughters to succeed to his property in equal shares. All that he was prepared to say was that he had made all arrangements. Nor did the deceased, according to the evidence of Victor Fernando, Village Headman, tell him at any time that he had in fact executed the document by which the property would go to his two daughters. Fernando was a man who had taken an active interest in bringing about the settlement of the divorce case and who had been an intermediary between the parties. It is to him that the deceased had given the undertaking at the time of the settlement of the divorce case that he will make arrangements for the property to devolve on both daughters after his death and, yet, to him he does not disclose the fact that he had carried out his intention by executing the document. On the other hand, he appears to have selected Mr. Fernando, Proctor, who had taken no part whatever in the disputes between the parties to furnish the information that he had executed a document. I have given the most careful consideration to Mr. Fernando's evidence, but I regret I am unable to accept his evidence that the deceased told him at any time that he had made provision for his two daughters to succeed to his property in equal shares after his death.

The next witness, who deposed to the fact that the deceased had told him about the provision made for both daughters, is Rev. Dhammaloka Thero. Rev. Dhammaloka Thero practises as an ayurvedic physician and it is in evidence that he treated the deceased for some time during his last illness. The Rev. Thero's evidence, in the course of his examination-in-chief, was as follows:- (page )

"Q. You came to know the man. Did you discuss matters with him? A. Yes.

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"Q. What did he tell you?

A. I asked him the origin of his illness, how he came ill. He said that he had two children. On account of the absence of those two children and the sorrow that ensued thereon he had become ill. This is how he started. When he said that he had two children who were absent now and he was sorry, I asked him particulars about the children. He said they were two daughters. He said "all what I have I have written in their favour. After that they have neglected me". I asked him the reason why they were neglecting him. He said they were not united. I asked him whether he had a lot of wealth. He said he had. He said "I have written all that wealth by a last Will for those two daughters".

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This is the only witness who states that the deceased used the expression "last Will". All the others referred to it as some provision by which both daughters would get the property equally. In cross-examination, this witness gave answers which were contradictory and the general impression he left on me was that he was not a frank or reliable witness. At one stage he stated that he knew what this case was about and that the deceased's son-in-law Austin had come and told him that his father-in-law was dead. Immediately thereafter he stated that he did not know exactly what this case was about. He then stated that he received a summons and consequently came to Court and did not know why the summons had been sent and that it was only after coming to Court he knew by which party he was being called. To further questions in cross-examination he stated as follows (page ) :-

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"Q. You did not know on what matters you were going to be questioned in Court?

A. I did not know. When I was asked details about the patient I was able to say this.

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"Q. That is, when in the witness box you were asked by learned Counsel for the Petitioner about the details of the conversation that you came out with the story about the last Will: is that what you say? A. Yes.

(Page ) Q. It was only today when you were in the witness box you knew on what matters you were going to be questioned?

A. Yes. I came to Court to give details about the patient.

Q. You know from the summons that you were summoned to give details about the patient?

A. No. The summons served on me asked me to attend Court. So I came to Court.

Q. So you did not know from the summons that you were going to be asked about the deceased's illness? A. No.

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Q. Before you got into the witness box today did anybody talk to you about the evidence you were to give in this case?

A. Mr. Austin told me that I had been summoned as there had been a testamentary case.

Q. Did he tell you what evidence you were expected to give?

A. I told Austin that I would give evidence regarding my treating the deceased.

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Q. Did he tell you that you could give evidence about the deceased having made a last Will?

A. Austin asked me, "didn't the deceased tell you in this way?" Then I said "Yes".

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This conversation with Austin took place after I came to Court. I think it was yesterday that Austin spoke to me for the first time regarding this matter. Yesterday was the first time I met Austin after the deceased's death. Prior to the deceased's death I had met Austin. It was from Austin that I had heard about the deceased's death. Prior to the deceased's death I had never met Austin".

In re-examination he stated that he had discussed the case with the lawyers of the Petitioner when he attended Court on an earlier occasion on summons. To further questions by Learned Counsel for the Petitioner, he stated as follows:-

"Q. You have told the Court that your lawyers asked you about the evidence you were going to give?

A. Yes. I told the lawyers what evidence I was going to give.

Q. Do you know how the lawyers came to know what evidence you were going to give? Did you tell any body before you came to Court

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what evidence you were going to give?  
A. I cannot say.

Q. Did you tell anyone what evidence you were going to give. Did you tell either Peiris or Mrs.Peiris or anybody?

A. I had told the advocates."

The witness was obviously not prepared to concede that he had discussed his evidence with Austin Peiris or the Petitioner. I regret to say that, in my opinion, his evidence that the deceased told him that he had left a last Will leaving all his wealth to the two daughters is untrue. 10

John Appuhamy stated, in the course of his evidence, that he had been a trusted servant of the deceased for a total period of about 18 years with a short break in between and that on 8.5.53 the deceased and Marina Fonseka by a writing (P21) adopted his (John's) daughter Darlin. In the course of his examination-in-chief he stated (page ) :- 20

"Q. You now know you are a devisee of Rs.1,000/- under the Will P11?

A. The child. Mr. William Fernando was telling me "Now I am old. I wont give you anything now. But I will make arrangements that you will get something after my death".

In cross-examination he stated (page ) :-

"Q. You understood from what the deceased told you that he had left a last Will by which you were going to get some money? 30

A. No, I did not understand like that. He did not tell me like that.

From his statement I understood that after his death I would get from some source. He mentioned an amount of Rs.1,000/- He, however, admitted under further cross-examination that he had sent two letters dated 1.4.54 and 6.5.54 respectively (R24 and R25) to the Respondent, (they were in fact addressed to the Respondent's lawyers) claiming a sum of Rs.3,000/- which the deceased had promised to pay him. 40

The concluding paragraph of R25 is :-

"Further the sum of Rs.3,000/- the payment of which apart from being a legal claim is moral obligation on the part of my late master's daughter who is inheriting so much from him".

He admitted that the letters in question were drafted for him by Mr. Paul Pillai, the proctor for the Petitioner. When he was cross-examined as to why he put forward a claim for Rs.3,000/- when according to his evidence the deceased had promised to pay him only Rs.1,000/-, he sought to explain that the deceased had at some stage intended to buy a car for him for Rs.3,000/- and had in fact got a car down for that purpose, but later changed his mind as he feared that he (John) would leave his services if he was presented with a car. He (the deceased) had thereafter told him to live with him until his death and had said that he would get Rs.1,000/- after his death. In my opinion, the whole of the evidence of John on this point is false and I reject it.

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If, in fact, the deceased had executed a Will on 4.6.51 devising his property to the Petitioner and the Respondent equally, why did he not disclose that fact to the Petitioner? It is the Petitioner's case that both she and her husband had been on visiting terms with the deceased after his return to Kaldemulla and even earlier. Rev. Wikremanayake's evidence shows that in September or October 1952 there was anxiety in the minds of the Petitioner and her mother in regard to what the deceased would do with his property. Would the deceased not have allayed all such anxiety by disclosing to the Petitioner the fact that he had already executed a last Will in terms of which she will become entitled to a half share of his estate? If he was prepared to disclose that information to outsiders like Mr. A.V.Fernando and Rev.Dhammaloka, why should he have been reluctant to disclose it to the party most intimately concerned with it, namely, the Petitioner? The widow stated in her evidence at page that if the deceased had not given her Rs.5,000/- in 1952 under the agreement P8, she would have taken steps to "renew the divorce case" which had been dismissed by consent in 1944. Would the deceased not have disclosed before he executed the agreement P8 that he had already provided for a legacy of Rs.5,000/- to the widow by a last Will?

According to the Respondent, when the deceased executed last Will R9 in 1940, he informed her of that fact. He subsequently informed her of the execution of the second Will in 1950 and also told her about the agreement he had entered into with Raymonds. He had informed her that the Will had been attested by Mr. Felix de Silva, Notary Public,

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and she had obtained the Will from him after the death of the deceased. I see no reason to disbelieve this evidence of the Respondent.

In a similar way, would the deceased not have disclosed to the Petitioner the name of the notary who attested the Will by which she was to become entitled to a half share of the estate. It was submitted by learned Counsel for the Petitioner that the deceased did not disclose the information to the Petitioner as the Petitioner and the Respondent were still on bad terms with each other. The only person who could have become displeased by the execution of a subsequent Will altering the dispositions contained in the earlier Will of 1950 was the Respondent. If the Petitioner and the Respondent were not on friendly terms, there was no risk of the Petitioner disclosing to the Respondent the terms of the second Will if the terms were disclosed to her by the deceased. It would have been to her advantage to have kept the information a secret. Why then should the deceased have been reluctant to disclose to the Petitioner the execution of the Will if it did take place? On the other hand, during the last days of his illness he handed to the Respondent (John's evidence page ) the keys of his safe. Would he have so handed the keys if there was in the safe a last Will which altered the dispositions contained in the Will of 1950 by reducing the Respondent's share to one half? This circumstance not only shows the complete confidence that the deceased reposed in the Respondent but also militates against the theory that there was in the safe the original of the last Will of 1951.

The conduct of the deceased is not consistent with his having executed a Will in June 1951. An examination of the documents produced in the case leaves one in no doubt that the deceased could not have told anyone that he had executed a document by which both daughters will equally succeed to his Estate.

Learned Counsel for the Petitioner, however, submitted that the execution by the deceased of the Deed of Gift R30 in January 1953, whereby he gifted to the Respondent the house at Melbourne Avenue, is a strong indication that there was a Will subsequent to the Will of 1950. For, under the Will of 1950 the Respondent would have become entitled to the entirety of the deceased's estate on his death and where then was the necessity to execute a deed of gift of one property. The Respondent's

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10 explanation is that in October 1952 when she found that the deceased had pardoned the Petitioner and had given her a sum of money as a gift, she feared that the Petitioner might make an endeavour to get the Melbourne Avenue property as well and consequently she asked the deceased to execute a deed in her favour for that property especially as she had spent some of her own money too in connection with the purchase of and repairs to that property and she was resident therein; and when she made that request the deceased readily agreed and told her "you need not wait till I am dead for you to become the owner of that house. Before that I will do it" and he thereafter executed the deed. The explanation given by the Respondent for the execution of that deed is, in my opinion, quite a reasonable one and I accept it. That the Respondent was, perhaps, not very happy at the deceased having pardoned the Petitioner and that she did endeavour not to allow the Petitioner to get too close to the deceased is shown by certain subsequent events.

20 On 20.2.54 the deceased's illness was such that, on the advice of the doctor, he was removed to hospital in Colombo. On that day the Petitioner received the letter P10 through a servant of the deceased. It purported to be from the deceased and informed the Petitioner that he was a little better and further informed her not to go to see him and that if his illness became serious he would send her a message. The Petitioner did not go to see the deceased, who was taken to hospital that day by the Respondent. He was operated on the next day and he died on the 22nd. On 3.3.54 the Petitioner made a complaint to the village headman P16 as follows :-

30 "On the morning of the 20th day of last month a letter has been sent to me as if it were written by my father by the manager named Simon. I understood that it was not my father's handwriting. Headman please go and inquire from Simon and let us know at whose instigation the letter was written".

40 According to the Headman, he inquired from Simon the next day and Simon stated to him (P17) that the letter had been sent at the request of three people, namely, the Respondent, her son Lala and one Mr. Peiris, and it was not sent at the request of the deceased. He also added in that statement that when the letter was written the deceased was in a state of complete unconsciousness. The statement

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was signed by Simon. The evidence of the Respondent and of Simon in regard to the document (P10) is that the first part was written by Simon on the instructions of the deceased and the latter portion was written by the deceased himself. Simon admitted his signature on the Headman's diary, but he stated that he had not read the statement before signing it and that what he told the Headman was that the letter had been written on the instructions of the deceased. I reject the evidence of Simon and I accept the evidence of the Headman that he recorded the statement P17 as made to him by Simon and that Simon signed it. It is probable that the letter P10 was sent to the Petitioner at the instance of the Respondent as the Respondent was anxious to keep the Petitioner as far away from the deceased as possible.

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The fact, however, remains that the Petitioner did act on that letter and did not go to see the deceased. In her evidence in Court she stated (page ) that as soon as she received the letter she remarked there and then "this is not written by my father. It is not his handwriting". If she did not in fact treat that document as a letter from her father, why did she not go immediately to the deceased's house to see how his condition was? If, as she stated, she was on cordial and visiting terms with her father, and if her suspicions were roused in regard to the genuineness of letter P10, her normal reactions would have been to go straight to her father's house. According to the evidence of the Petitioner's husband Peiris (page ), he was shown the letter P10 on the 20th itself by the Petitioner but she did not tell him on that day that it was a false letter. It was about 5 or 6 days after the death of the deceased that they suspected the genuineness of the letter and thereafter made a complaint to the Headman. The complaint to the Headman was a day after the widow had filed certain papers in this case in Court. The fact that the Petitioner was inclined to accept the letter P10 as genuine at the beginning although it contained the statement "If you come, my illness may be serious" shows that her relationship with the deceased on that date was not as friendly and cordial as she made out in her evidence.

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The body of the deceased was taken to Kalde-mulla on the 22nd night and on the 23rd there appears to have been a dispute between the Petitioner

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and her mother on one side and the Respondent on the other in regard to the car owned by the deceased. According to the Petitioner and her mother, the Petitioner's husband and mother had made use of the car on the 23rd for the purpose of carrying out the funeral arrangements but on the 23rd evening the Respondent got the car locked up and refused to hand over the switch key to anyone although the car was required in connection with the funeral arrangements. According to the Respondent, on the other hand, she did not want the Petitioner or her husband or mother to make use of that car but she offered her own car for use in connection with the funeral arrangements and if they did not wish to make use of her car she offered to pay for a hiring car. The police and the Headman went to the house on receipt of information. The entry R23 made by Sub-Inspector Joachim in the Headman's diary at 1.55 p.m. on the 23rd shows that there was a dispute in regard to the car which the Respondent claimed as hers under the last Will of the deceased. The Respondent's proctor also was present and an attempt was being made to bring about a settlement. The attempt at settlement does not appear to have been successful and after midnight on that day Inspector Caldera arrived at the spot. According to Inspector Caldera, he found that there was lot of excitement between the parties and he removed the car, the iron safe of the deceased and certain other belongings to the Police station after giving the widow a receipt P13. Inspector Caldera did not record the statements of any of the parties at that time but he went to the spot again at 10.45 a.m. and recorded certain statements. It would appear that before he went back to the house at 10.45 he had taken the articles in question to the Magistrate's Court, Colombo South, but the Magistrate had directed that the articles be produced in the District Court. Before producing the articles in the District Court, Inspector Caldera had gone to the house to record certain statements. The Petitioner's case is that the Petitioner and widow had protested against Caldera removing the articles from the house without their consent but that Caldera had removed them despite their protest. They rely on a statement (P18) made at 6.30 a.m. on 24.2.54 to the village Headman in which they had mentioned that the articles had been forcibly removed. The bona fides of Caldera was strongly attacked by Learned Counsel for the Petitioner, who stated that Inspector Caldera had

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committed an irregular act in removing the articles from the house without the consent of the Petitioner and the widow and that he recorded or purported to record certain statements in order merely to justify his irregular conduct. According to Caldera, no one had protested against the removal of the articles when he took them and on the second occasion when he went to the house he recorded statements the widow herself made a statement but stopped it half way on the instructions of the Petitioner's husband. He produced in evidence a copy of that statement R14.

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The widow denied having made the statement R14 to Caldera and the statement was attacked by Learned Counsel for the Petitioner as a fabrication by Caldera. The evidence shows that Caldera had given a receipt for the articles (P13) before removing them and I do not believe the evidence of the Petitioner and her witnesses that the articles in question had been removed forcibly by Caldera, despite the statement P18 that had been made to the Headman. It is recorded in P18 that it is not a complaint but is intended for production when required. In my view that statement was made on the initiative of the Petitioner's husband with a view to meet future eventualities, if any. It would, no doubt, have been more satisfactory if Caldera had recorded the statements of the parties before he removed the articles and he would not have laid himself open to attack if he had done so. Nevertheless, I do not accept the suggestion that the statement R14 was a fabrication by Caldera. I accept his evidence that the statement was made by the widow and that while she was making it she stopped half-way on the instructions of the Petitioner's husband.

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The incidents of the 23rd and 24th February have no direct bearing on the matters in issue in this case. I have, however, dealt with them because of the submission of Learned Counsel for the Respondent that they have an indirect bearing in that the Petitioner, her husband and the widow acted on the basis that there was no last Will left behind by the deceased. In R14 the widow stated that she was not aware whether the husband had made a Will. Sub-Inspector Joachim's note (R23) shows that the Respondent had claimed the property as her's under a Will. In R14 the widow further stated "I claim my share due to me as the lawful wife of the deceased". No claim appears to have been put forward at that stage on the basis that

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there was a Will or a writing from the deceased under which the Petitioner was entitled to a half share of the property.

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10 I now pass on to the most important part of the Petitioner's case, namely, the direct evidence led in regard to the execution of the Will P11 by the deceased. The witnesses who gave evidence are the Notary Mr. Tudugala and one of the attesting witnesses, Mr. Devapuraratne, also a Proctor. The other witness, whose name appears on the Will as an attesting witness, is Mr.C.Vethecan, Proctor, who is now dead. The Respondent's case is that not only the signature of the Testator William Fernando but also that of Mr.Vethecan is a forgery.

20 Mr.Tudugala is a Proctor and Notary practising in Colombo. He has been in the practice for 27 years and as a notary he has attested about 600 deeds during this period. He had been a member of the Urban Council, Kolonnawa, for 12 years and had been Chairman for 5 years. According to his evidence, he knew the deceased William Fernando and had met him first about the beginning of 1950. A client of his named John Perera had owed money to the deceased and he had brought him to his (Tudugala's) house in order that he may speak to the deceased and get some time to make the payment. The deceased was a client of Mr.Wijesekera, Proctor and Notary, whose office adjoins his (Tudugala's). After the first meeting in 1950 he had met the deceased a number of times in his office when he had come to meet Mr.Wijesekera and has spoken to him on those occasions. On 4.6.51 the deceased came to the office at about 9.30 or 10 a.m. and inquired from him if Mr.Wijesekera had arrived. He informed him that Mr.Wijesekera had not come. He (the deceased) waited for Mr.Wijesekera for some time and then told him that he wanted to make a Will. He (Mr.Tudugala) asked him to wait till Mr.Wijesekera arrived. He then stated that he was in a hurry and wanted him (Mr.Tudugala) to attest the Will and gave him the necessary instructions. He wanted the Will written that day itself. He asked him to return in the afternoon to sign the Will and accordingly he came at about 12.30 or 1 p.m. when he had the Will ready. He explained the Will to the deceased who was satisfied with it. He (Mr.Tudugala) wanted him to get two witnesses who were known both to himself and the deceased and he inquired whether he knew any witnesses. The deceased then suggested the name of Proctor Vethecan

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and went and brought Mr.Vethecan to the office. He (Mr.Tudugala) then asked him to get another witness. While they were waiting, Mr.Devapuraratne passed that way and he (Mr.Tudugala) called him in and inquired whether he knew the deceased. Mr. Devapuraratne replied he did and then he (Mr.Tudugala) explained the contents of the Will once again to the deceased in the presence of both the witnesses. Thereafter the deceased and the witnesses signed the Will. After signing the Will the deceased wanted it immediately, but he (Tudugala) told him he had to complete the attestation and asked him to call for it about 4 or 4.30 in the evening. He returned at 4.30 and took the original away. Mr.Devapuraratne supports the evidence of Mr.Tudugala in regard to the Will having been signed by the deceased and witnessed by himself and by Mr.Vethecan.

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In cross-examination he admitted that in 1944 or 1945 a creditor of his had filed papers to have him adjudicated an insolvent and he was examined in those proceedings. After inquiry he was refused a certificate. He appealed from the order but did not prosecute the appeal. Instead he settled with all his creditors paying them in full. He stated, however, that this was the work of his political enemies.

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He was next cross-examined in regard to certain transactions he had in 1939 with a lady named Mrs.Jayalath. It was put to him that he had promised to marry her and had thereafter borrowed moneys from her but had failed either to marry her or to return the money and that she had to file action against him to recover the money paid by her. At first he denied that he ever gave a letter to that lady promising to marry her, but when the date of the letter was put to him he replied that it may be that he gave a letter. He denied that he was engaged to Mrs.Jayalath for any period of time, but when his evidence in the Insolvency case was put to him, his reply was "If it is there, it is correct".

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He was next cross-examined as to whether he had been arrested on a warrant issued in execution of an unsatisfied decree in favour of one D. P. Kannangara, a creditor of his. His reply was "I may have been arrested on a warrant" and said that he had doubts about it. When, however, he was confronted with his evidence in the Insolvency case where he had admitted he had been arrested on

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a warrant in 1934, he replied "If it is there, it is correct". An arrest on a warrant is not a matter of every day occurrence and a professional man can certainly never forget that fact if he had been arrested at any time of his life. He admitted that when he was produced before Court on the warrant of arrest, he disclosed that he had a life interest in a property in Hill Street which gave him an income of Rs.40/- a month and on disclosure of that property he was discharged, and the creditor was directed to seize and sell the life interest. Cross-examined further in regard to the alleged life interest which he disclosed and on the basis of which he had obtained the discharge, he admitted that the property in question had belonged to his mother and under her Will which had been admitted to probate it had been devised to his brothers absolutely and that he was not entitled to any interest in those properties. There was no provision in the last Will under which he was entitled to any life interest. But, he stated that there was an understanding between his mother and brothers, which was not incorporated in the Will, under which his brothers used to pay him Rs.40 a month and he regarded that payment as life interest over the property. It is clear from the further evidence he gave in regard to this matter that he had deliberately made a false statement to Court that he had a life interest in order to secure his release. The general impression he created on me in the witness box was most unfavourable. He was lacking in candour and did not hesitate to contradict his earlier answers if he found they were inconsistent with the position he was seeking to adopt.

In regard to the circumstances under which he met the deceased for the first time, he admitted that John Perera had not been sued by the deceased and that he wanted only a fortnight's time to pay and settle the amount. John Perera had asked him (Mr.Tudugala) to tell the deceased that he will raise a loan and pay the amount due to him. Ultimately no loan was raised by him for John Perera but John Perera raised a loan elsewhere and paid the amount due to the deceased. Apart from Mr. Tudugala's own testimony, there is no other proof that the deceased was a creditor of John Perera or that he had any dealings with Mr.Tudugala as the Proctor of John Perera. John Perera is said to be dead. Mr. Tudugala's evidence in regard to his first conversation with the deceased at his house was as follows (page ):-

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"Q. Did you know on the occasion the deceased came to your house at Sedawatte where the deceased was living?

A. He told me everything. He told me he was a wealthy man, worth lakhs and lakhs; that he was known as the Indian Mudalali; that he was a business man. That is all I can remember.

Q. On the day the deceased came to your house did you know where deceased was living? 10

A. He told me that also. He said he was living at Kaldemulla close to Moratuwa.

Q. Didn't he tell you he was residing at Matale?

A. Formerly he was residing at Matale. I cannot remember for how many years he told me he resided at Matale. When he came on that occasion he told me that he had come from Matale to reside at Kaldemulla".

The last answer was perhaps intended to give some corroboration to the Petitioner's case that the Will was executed after the deceased had returned to reside at Kaldemulla. When learned Counsel pointed out to him that there was evidence in the case that the deceased had come to reside at Moratuwa from Matale in July 1952 and asked him whether there was any reason why the deceased should have made a false statement to him that he was residing at Moratuwa and not at Matale, his answer was "Deceased did not tell me. John Perera told me". Questioned further he gave the following evidence (page ) :- 20

"Q. Did you tell us earlier that the deceased told you that he was living permanently at Moratuwa? A. I did not. 30

Q. Did you tell us earlier that the deceased told you on that occasion that he had lived at Matale and that he had come to reside at Moratuwa some days before he came to see you?

A. John Perera told me. I said what John Perera told me. 40

Q. Did you tell the Court that the deceased told you that he was residing at Moratuwa permanently?

A. I did not tell the Court that. I said that John Perera told me.

.....

"Q. The deceased did not contradict John Perera's statement as to his residence?

A. I did not ask that question in the presence of the deceased because I knew.

Q. You asked John Perera where deceased resided on the first occasion John Perera came to you alone?

A. He told me everything previously, prior to the date on which the deceased came. On the date on which he came with the deceased there was no talk about the deceased.

Q. You tell us then that on the occasion that the deceased came with John Perera to your house there was no discussion as to the residence of the deceased? A. No.

Q. There was no talk about the wealth of the deceased?

A. I did not question him. There was no discussion.

Q. All the information about the deceased that you gave earlier in your answers were given to you by John Perera prior to the date on which he came to see you with the deceased?

A. That is so".

It will be seen that the witness deliberately went back on his earlier answers and denied that he gave the earlier answers when he found that he had stated something which was apparently not supported by the other evidence led in the case.

The deceased was admittedly a client of Mr. Wijesekera, and according to Mr. Tudugala, after the date he met him at his house in 1950, he met him on several occasions in his office when he had come to see Mr. Wijesekera. When the deceased asked him to attest the Will he told the deceased that he should explain to Mr. Wijesekera why he had got the Will attested by him. He took the instructions down on a piece of paper as the book in which he sometimes notes instructions had been left behind at home. In cross-examination he stated (page ) :-

"I took down instructions. I took down the instructions so that I could explain to Mr. Wijesekera why I was doing this. I was not keen to attest the Will at all; it was other people's work".

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But, he admitted later (page ) that he did not mention to Mr. Wijesekera that the deceased had come and waited for him and because he had not turned up he had got a last Will attested by him. Pressed by learned Counsel for the Respondent as to why he did not disclose to Wijesekera thereafter the fact that he had attested the Will, his answer was :-

"It was not proper to tell him because it was a Will".

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In re-examination he offered the following explanation in evidence (page ):-

"Mr.Wijesekera was my friend, sharing the same office. I did not want him to feel that I was taking up his work. This Will was a confidential document. I was asked whether I had told Mr. Wijesekera thereafter that I had done the work. I did not tell him. I was waiting till Mr.Wijesekera asked me. I thought if the Testator spoke to me about his having told Mr.Wijesekera then I would have known that he had told Mr.Wijesekera. When the Testator did not tell me anything I thought the Testator had not told Mr.Wijesekera and I thought it was not proper for me to mention it to Mr.Wijesekera".

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The explanation is hardly convincing. The witness further stated that he met the deceased thereafter only once but that was at the Colombo Kachcheri and the deceased was busy and he did not speak to him.

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Mr.Tudugala's evidence in regard to his giving a copy of the Will to the Petitioner's husband Peiris is briefly as follows (as given in the course of his examination-in-chief pages and ) In May 1954 Mr.Peiris, whom he had not known before, came to his office at Hultsdorf and inquired from him whether he had attested a last Will of one William Fernando. He then told Peiris that he could not give the information without referring to his protocols and that his protocols and the register of deeds were both at home and that he should refer to them before he could give the information. Peiris then gave the particulars and the names of the two daughters of the deceased. On the following day Peiris called at his house. He (Tudugala) had by then referred to the protocols and found that the information given by Peiris was correct. Peiris then asked for a copy of the Will.

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He refused to give him a copy and told him "I do not know you and I have no right to give you a copy of the Will". Peiris went away and returned 2 or 3 days later and told him that he would pay a good fee if he gave him a copy of the Will. He then inquired from Peiris whether the Testator was dead. Peiris told him that he was still alive. He then asked Peiris to go and get the original from the Testator. Peiris then replied that the original was missing and asked for a copy, but he refused. Peiris came back on a fourth occasion and when he asked him again whether the Testator was dead, Peiris replied that he was. Even then he refused to give him a copy of the Will as it was not right for him to divulge the secrets. Peiris then told him that he was the son-in-law of the Testator. Even then he did not give a copy but told him that he must make inquiries about him before he furnished a copy. Peiris mentioned the names of some proctors living at Moratuwa from whom the inquiries could be made. One of the names so mentioned was that of Mr. Paul Pillai, the Proctor for the Petitioner in this case. He then made inquiries from Mr. Paul Pillai, was satisfied that Peiris was the son-in-law and then he gave him a copy. He swore an Affidavit (P14) in regard to the execution of the Will to be filed in Court on 24.6.54. On the 25th when he was reading the Daily News he saw an Order Nisi published in regard to another Will of the deceased. Peiris had not told him about those testamentary proceedings. He (Mr. Tudugala) then took the copy of the paper and came to Hultsdorf and inquired from Mr. Paul Pillia and found that Testamentary proceedings had been instituted on an earlier Will. In cross-examination, however, he stated (page ) that on the first occasion on which Peiris saw him he disclosed to him that William Fernando was his father-in-law and wanted to know whether William Fernando had left a last Will. He had then asked Peiris why he wanted the information and Peiris told him that he had made inquiries from a number of proctors and they had all said they had not attested a Will. Then he had thought of inquiring from him because he was in the same office as Mr. Wijesekera. When he inquired from him why he wanted to know whether William Fernando had left a last Will, he replied that the Will was missing. He (Mr. Tudugala) did not himself know whether at that time William Fernando was alive or dead, but he had assumed that

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he was alive. It did not strike him to refer Peiris to his father-in-law to get the information regarding the Will. At one stage of the cross-examination, when he was asked whether he inquired from Peiris why he wanted the information whether William Fernando had left a Will, he stated that he had and Peiris had given the reply that he wanted to file testamentary proceedings. A little later, however, to the same question he gave the opposite answer and stated:-

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"I asked him why he wanted a copy of the Will. He did not tell me he wanted to file testamentary proceedings. He told me he was the son-in-law of William Fernando.

Q. Were you satisfied with the answer given by Peiris to your question why he wanted the last Will? A. Yes.

Q. Satisfied with what reply?

A. That he was the son-in-law.

Q. Did you ask for any further particulars?

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A. I asked him for the names of the daughters. I asked for the full names of the two daughters.

.....

(Page ) Q. On the first occasion when Austin Peiris asked you for the information about the last Will you had made up your mind not to give the information? A. Yes.

Q. Still you asked him to give the names of the two daughters? A. Yes.

.....

I asked Austin Peiris for particulars to refer to my protocols. 30

Q. Did Austin Peiris tell you that the two daughters had been benefited under the Will?

A. He did not tell me.

Q. Then what was the purpose in finding out whether he had daughters or boys?

A. To refer to the protocol and find out.

(To Court:

Q. Unless he told you that property had been left to the two daughters how was it going to assist you?

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A. To assist me that there was such a Will.

I wanted to know whether there was a Will in favour of the daughters).

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Q. What Austin Peiris asked you on the first occasion was whether there was a Will attested by you in favour of two daughters, whose names he gave you? A. Yes.

Q. Not the question simpliciter whether William Fernando had left a last Will or not?

10 A. I thought I might have attested Wills for a number of S.William Fernandos'.

Q. Did you ask Peiris what "S" stood for?

A. Yes. I thought there would be a number of persons with that name for whom I had attested Wills".

Mr. Tudugala further stated under cross-examination (page ) that when he read the Order Nisi in the newspaper he came to know of a Will of the deceased attested by Mr.Felix de Silva and that he had questioned Peiris as to why that fact had been suppressed from him. He had also come to Court and referred to the case record to find out whether the provisions contained in the Will attested by him were different from the provisions in the Will attested by Mr. Felix de Silva. He had done this, according to him, out of curiosity. He was aware that the Will attested by him was subsequent in date to the Will attested by Mr. Felix de Silva. To further questions in cross-examination, he stated as follows (Page ):-

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30 "Q. Why were you interested to find out whether the provisions of the Will attested by Mr. Silva were different from those attested by you? A. Naturally I was interested.

Q. Is it curiosity?

A. I was anxious to find out.

Q. I asked you whether you were curious to find out and your reply is that you were anxious?

A. Yes.

40 Q. Assuming the provisions contained in the Will attested by you were different from the provisions of the Will attested by Felix Silva, how would that interest you?

A. Because I knew the Testator and I attested the Will.

.....

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Q. Can you tell us why you were anxious to find out about the provisions contained in Mr. Silva's Will?

A. I wanted to find out the provisions in that Will and the difference".

After some further questioning the witness went back on some of the answers referred to above and stated (page ) that he looked into the record a few days after he saw the Order Nisi and that on the date of which he saw the Order Nisi in the papers he met Austin Peiris and Peiris told him of the provisions of Mr. Felix de Silva's Will. Nevertheless, he looked into the record thereafter to satisfy himself in regard to the provisions in the Will attested by Mr. Felix de Silva. Questioned further the witness gave the following evidence (page ):-

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"I knew about the testamentary case only when I read the order nisi. I was annoyed that he had suppressed from me this fact. I was annoyed because he had told me a lie. He told me a lie when he said that no case was filed. I did not ask him whether a testamentary case had been filed. He had not mentioned that fact and I was annoyed.

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Q. Why did you take the view that he should have mentioned to you the fact that a testamentary case was filed in which another Will was being proved?

A. That was necessary for my information.

30

Q. How was that going to help you to find out whether you had attested a Will of William Fernando or whether you were to give him a copy of that Will?

A. That would have made me know that he had made another Will.

.....

Q. How would the information regarding the testamentary case have helped you in the matter of your giving him a copy of the Will or not?

A. That would have informed that this Will would have been brought up, this being the later Will. This will revokes all previous Wills.

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Q. How would the fact of a testamentary case having been filed in respect of an earlier Will have helped you in regard to the matter

of your giving a copy of the last Will attested by you?

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A. I would have then known that there would have been a contest.

Q. And the possibility of a contest would have been a matter which you would have taken into consideration in giving him a copy of the Will or not?  
A. Yes.

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"Q. You tell us that if you had known of a testamentary case in respect of an earlier Will you would have charged a higher fee for the copy of the subsequent Will?  
A. Yes.

Q. Why would you have charged a higher fee?

A. I would have had to give evidence like this. It is normal for people to execute a number of Wills. The Testator told me he had executed 2 or 3 Wills.

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Q. When he executed this Will you did not think that there would be a contest?

A. Yes, because he was making a natural Will. I did not find out the provisions of the earlier Will.

Q. If you knew that there was a testamentary case in respect of an earlier Will why should you think that there would be a contest?

A. There must be a contest.

30

Q. If there is an earlier Will there must necessarily be a contest in respect of the subsequent Will?

A. Because a testamentary case had already been filed in respect of an earlier Will.

Q. Didn't it strike you that the testamentary case might have been filed in ignorance of the existence of this Will?

A. It did not strike me.

Q. When you read about the testamentary case in the Daily News you thought that there was going to be a contest in regard to your Will?

A. Yes.

.....

Q. You thought there would be a contest and that is why you wanted to see the record in the testamentary case?  
A. Yes.



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Q. And that was the reason why you wanted to question Austin Peiris too? A. Yes.

.....

Mr. Peiris told me that there was a contest. He told me later. I was wondering whether this protocol would be accepted.

Q. Before Austin Peiris told you that the Will would be contested did you think that the Will would be contested?

A. I thought that the Will would be contested.

Q. Because your will was subsequent to the Will of Mr. Felix Silva? A. Yes. That was the only reason. 10

.....

"Peiris told me that he had got a handwriting expert to examine the signature of the deceased on my Will. Peiris told me of this some time ago; that was when these consultations were going on".

In regard to his anticipation of a contest, the witness gave a further reason on the next date of hearing (page ) :- 20

"I knew there would be a contest for this reason, if the original was produced then that would be accepted, that would be the proper Will. The copy of the protocol would not be accepted as the original".

On the previous date, although he stated that he wondered whether his protocol would be accepted, he did not assign that as one of his reasons for anticipating a contest of the Will attested by him. In regard to the evidence he had given on the earlier date that he would have charged a higher fee for the copy if he had known of the testamentary case, he stated on the next date (page ) :- 30

"Q. If you knew that a testamentary case had already been filed in respect of an earlier Will what fee would you have called for from Mr. Peiris for a copy of your Will?

A. I would have charged the same fee.

Q. Did you tell us yesterday that you would have charged a higher fee in those circumstances? 40

(Witness' evidence on this point yesterday read to him)

A. If it is there it is correct.

Q. Was that a truthful reply?

A. That was a truthful reply. I want to explain. I would have charged a higher fee because he cannot get a copy of the Will from anywhere else.

.....

Q. You said yesterday you would have charged a higher fee: what was the fee you had in mind yesterday?

10 A. I would have charged about 3 or 5 hundred rupees because he was a wealthy man also.

.....

Q. Would you have called for that fee of 3 or 5 hundred rupees if you had known of the existence of a testamentary case at the time the copy of the Will was asked for? A. Yes.

Q. Why would you have called for that higher fee of 3 or 5 hundred rupees if you knew the existence of a testamentary case?

A. Because you cannot get a copy from anywhere.

20 Q. The demand for the higher fee had no reference then whatsoever to the existence or non-existence of a testamentary case in respect of the estate of the deceased?

A. No."

30 It was submitted by learned Counsel for the Respondent that if, in fact, the deceased had gone to get a Will attested by Mr.Wijesekera and had got it attested by Mr.Tudugala because Mr.Wijesekera had not arrived in time, the normal conduct of Mr.Tudugala would have been to tell Mr.Wijesekera later that he had attested a Will for his client because he had not come to office that day and that Mr.Tudugala's failure to mention it to Mr.Wijesekera is due to the fact that no such incident took place on 4.6.51. He also submitted that the reaction of Mr.Tudugala when he saw an Order Nisi published in regard to an earlier Will executed by the deceased and attested by Mr. Felix de Silva disclosed a guilty conscience on his part in regard to the attestation of the Will in question. He had not anticipated any contest of the Will which he attested as he regarded the provisions of the Will as natural. Hence it was that he was keen to see the provisions of the earlier Will.

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It is not unusual for a person to execute more than one Will and a subsequent Will would always revoke the earlier Will. If a party has applied for probate of an earlier Will in ignorance of the execution of a subsequent Will, these proceedings would normally be terminated on the production of the later Will. There would in the normal course be no reason for anyone to anticipate a contest in regard to the subsequent Will. Mr.Tudugala's anxiety to go and refer to the case record himself and see what the provisions of the earlier Will were would appear to indicate that he had a greater interest in the matter than that of a notary who has attested the Will of a party known to him. Learned Counsel further submitted that the various contradictory answers given by Mr.Tudugala in regard to his alleged conversation with Peiris before he gave a copy of the Will are due to the fact that he was testifying to something which never occurred. In my opinion, there is considerable force in these submissions of Learned Counsel for the Respondent. It was a curious coincidence that the deceased went to Belmont Street office of Mr. Wijesekera to get a Will attested by him but found that he was not there and got the Will attested by Mr.Tudugala and Peiris went in search of Mr.Wijesekera to the Belmont Street office and again found Wijesekera missing but met Tudugala, the man who was in a position to furnish him with the requisite information. Mr.Devapuraratne too had met the deceased for the first time when he (Mr.Devapuraratne) went to Mr.Wijesekera's office to meet him but finding he was not present he walked across to the portion occupied by Mr.Tudugala. Among the documents produced in this case are three documents attested by Mr.Wijesekera - P8, P9 and P30. All these documents show that they were attested by Mr.Wijesekera at Moratuwa and not in his Belmont Street office. Mr.Wijesekera resides at Moratuwa within easy distance of the residence of the deceased and, apart from the testimony of Mr.Tudugala and John, the driver, there is no other proof that the deceased ever went to the Belmont Street office to meet Mr.Wijesekera. The impression left on me by Mr.Tudugala by the time he left the witness box was that he is unworthy of credit.

The only other witness who testified to the execution of the Will is Mr.Devapuraratne. He is a Proctor of 19 years standing, and, before he became a Proctor, he was the Senior Shorthand writer

of the State Council. In 1937 he retired from Government Service on pension. Apparently the volume of his practice as a Proctor is little for he stated that he worked as a Stenographer in the Supreme Court over a couple of years ago for several years for which he received a remuneration of Rs.10/50 per day. He also worked as a Shorthand writer for the Law Society. He admitted that he, after becoming a Proctor, earned equally from the shorthand profession or perhaps more. He charges a fee for attesting the signature of anyone and in this case he was paid a fee of Rs.10/50 by the deceased. He also earns money by drawing petitions for various people. He is a good friend of Mr. Tudugala and had known him since 1922.

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According to his evidence-in-chief, he knew the deceased because he had been once introduced to him by Mr. Tudugala himself. In cross-examination he stated that he had met the deceased "once or twice" before 4th June. He had seen him in that office at Belmont Street, but had never talked to him. He could not remember how long prior to 4th June Tudugala had introduced the deceased to him. On that occasion he had gone to that office in Belmont Street to see Mr. Wijesekera but Mr. Wijesekera was not in and so he went up to where Mr. Tudugala was seated. There he saw the deceased with Mr. Tudugala and Mr. Tudugala introduced him. Although Mr. Devapuraratne came to Court in order to testify to the fact that the deceased had signed this Will, when he was asked in the course of his examination-in-chief as to who the Testator was, he had to look at the Will before he could give the reply that the Testator's name was Fernando. He further stated in the course of his examination-in-chief that on the date of the execution of the Will he was passing near the office of Mr. Tudugala when Mr. Tudugala called him in and asked him whether he could sign a last Will as a witness and he agreed. Thereafter the deceased too spoke to him and asked him whether he could sign a last Will of his and he said he had no objection. Then Tudugala read out the Will and he and Vethecan signed as witnesses after the deceased had signed it as the Testator. In the course of cross-examination, however, he stated (page ):-

"I am definite the first person who talked to me was Tudugala, and he asked me whether I am willing to sign a Will as a witness and I said, "I am quite happy to attest the Will of

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the person who was introduced to me as Indian  
baas.

.....

Q. Thereafter did the deceased also ask you -  
"Are you prepared to sign my Will?"

A. He must have asked me.

Q. You cannot recollect whether the deceased  
had asked you?

A. He may have. He had no objection.

If Tudugala asked me in the first instance  
and I said I was willing to sign the docu- 10  
ment as a witness there was no reason for  
the deceased to ask me.

Q. You tell us the deceased never asked you  
whether you were prepared to sign the docu-  
ment? A. I cannot be definite.

(The evidence of Mr.Tudugala read out to  
witness)

Q. I asked Mr.Devapuraratne whether he knew the  
Testator". Did Mr.Tudugala on 4.6.51 ask 20  
you whether you knew the Testator Mr. Fernan-  
do?

A. I told him that I knew him.

I cannot say whether he asked me that  
question.

Q. In fact, according to you, you have already  
told us that Mr. Tudugala was fully aware  
that you knew Fernando before 4.6.51?

A. May have been.

Q. Did you tell us earlier that Mr.Tudugala was  
quite aware that you knew the deceased prior 30  
to 4.6.51?

A. If I said so it must be true.

Q. Did you tell us earlier that Tudugala was  
aware that you knew the deceased prior to  
4.6.51? A. Yes.

"That is a correct statement. I have also said  
that as I stepped into the office Fernando  
gave me a look of recognition.

Q. Mr. Tudugala in those circumstances could  
never have asked you whether you knew Fernan- 40  
do or not? A. I cannot say.

Q. What is your impression. Did he ask you the  
question as you went into office  
"Do you know this man?"

A. He did not ask me."

I have considered Mr.Devapuraratne's evidence with anxious care, but I find myself unable to accept his evidence that he knew the deceased and that the deceased signed the Will in question in his presence.

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10 It was submitted by Learned Counsel for the  
Petitioner that apart from the direct evidence of  
Messrs. Tudugala and Devapuraratne, there is also  
the direct evidence of the Petitioner in regard to  
the signature of the deceased on last Will P11. He  
stated that the Petitioner was capable of identi-  
fying the signature of the deceased and she had  
stated affirmatively that the signature of the  
Testator on P11 is that of the deceased and that  
there had been no cross-examination on that point.  
He also submitted that there was no negative evi-  
dence and that the signature was not that of the  
deceased and that the Respondent, who could have  
spoken to the matter, had not referred to it in her  
evidence. I do not think that I can place any  
reliance or act on the testimony of the Petitioner  
that the signature on P11 is that of the deceased.

20 It was further submitted by Learned Counsel  
for the Petitioner that the register of deeds kept  
by Mr.Tudugala showed that he had executed this  
Will on 4.6.51. In the case of last Wills, however,  
the register does not mention the name of the  
executant or any other particulars relating to the  
Will. Against the serial number it is stated "Last  
Will and Testament" and all other particulars are  
left blank. No copy of the Will is transmitted to  
30 the Registrar of Lands along with the duplicates  
of deeds. The submission of Learned Counsel for  
the Respondent was that the last Will in question  
had been forged after the death of the deceased and  
the protocol had been substituted for the protocol  
of an earlier Will which had been attested by Mr.  
Tudugala on 4.6.51. Learned Counsel for the Re-  
spondent also submitted that they had to fix on  
4.6.51 as the date for the forged Will as, between  
40 the dates 13.5.50 and 20.2.54, Mr.Tudugala had at-  
tested only one Will and that was on 4.6.51. In my  
opinion, the substitution of the protocol of a  
later Will in place of the protocol of an earlier  
Will is quite easy in view of the fact that the  
register of deeds does not contain particulars re-  
lating to the Wills attested by a notary and no  
particulars are forwarded to the Registrar of Lands  
at the time of execution.

50 On the direct evidence led before me, I am not  
satisfied that the Will P11 is the act and deed of

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the deceased or that the signature of the Testator on the protocol produced in evidence is that of the deceased.

Peiris, the husband of the Petitioner, had been a clerk at Messrs. Julius & Creasy, Proctors. He had also been employed as a clerk in the Law Society. During that period he had done work for Mr. Valentine Perera, Proctor, who was also the Secretary of the Law Society. Although he denies it, (and also Messrs. Tudugala and Devapuraratne deny it) he must have known both Mr. Tudugala and Mr. Devapuraratne during the time he was functioning as a proctors clerk. As I have already indicated, Peiris is an entirely untruthful witness and, in my opinion, the evidence which he gave in regard to the finding of the Will and his trips to the offices of the various Proctors is a fabrication. If he wanted to ascertain whether the deceased had left behind a last Will, the first person he would have contacted is Mr. Wikesekera, as he appears to have done most work for the deceased. His explanation that he went to meet Mr. Wijesekera at his house at Moratuwa on several occasions but missed him can hardly be believed. I reject the evidence of this witness as untrue. It is not unlikely that it is he who has been responsible for the fabrication of the Will P11.

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The Respondent also called the evidence of Mr. Muthukrishna, who claimed to be a handwriting expert. According to his evidence, he had examined the signature of the deceased on P11 with certain admitted signatures of his on five cheques (R40 to R44) and, in his opinion, the signature on P11 is not the signature of the writer of the cheques. He also compared the signature of Mr. Vethecan on P11 with two admitted signatures of Mr. Vethecan, one on an affidavit dated 4.9.51 and one as witness to a last Will dated 21.12.48, and expressed the opinion that the signature "C.Vethecan" on P11 is not the signature of the writer of the standard specimens R45 and R46. As regards the signature of the deceased, it is in Sinhalese and Mr. Muthukrishna himself does not have sufficient acquaintance with that language. He, however, stated that it is not necessary for an expert to have the knowledge of a language to enable him to express an opinion in regard to whether two signatures were written by the same person. The signature of the deceased on P11 was not compared by him with any admitted signatures on any other deed

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or Will, and it is in evidence from the bank clerk that several cheques of the deceased used to be returned because his signatures used to differ. The comparison of the signature with the cheques as standards is, therefore, an unsafe comparison and I do not think that a Court would be justified in acting on the opinion expressed on such a comparison. Learned Counsel for the Petitioner drew attention to the fact that in the report submitted by Mr. Muthukrishna he had not expressly stated that the signature of the Testator on P11 was not written by the same person who had written the admitted cheques. In regard to the signature of Mr. Vethecan, Learned Counsel for the Petitioner was able to produce a large number of admitted signatures of Mr. Vethecan extending over a period of years. Mr. Muthukrishna himself had not called for more standards before he expressed his opinion that the signature "C. Vethecan" on P11 was not written by the person who wrote the standards R45 and R46. On an examination of the large number of admitted signatures produced by Learned Counsel for the Petitioner, Mr. Muthukrishna admitted that there was a regular irregularity in the signature of Mr. Vethecan. He had based his opinion to a large extent on the fact that the signature "C. Vethecan" on P11 had been written with a firm hand and showed a smooth flowing fist whereas the standard signatures showed a hesitant hand which lacked muscular control. He had also expressed the view that a person whose signature shows lack of muscular control cannot thereafter regain muscular control and write with a firmer hand, but the standards produced by Learned Counsel for the Petitioner showed that some of the signatures written after the date of R45 showed greater muscular control. He had also placed a good deal of emphasis on a pen-lift in the letter "V" which was shown prominently in an enlarged photograph of the disputed signature. He had, however, to admit in cross-examination that there was no such pen-lift in the original when it was examined through a stereoscopic microscope. It was suggested by Learned Counsel for the Petitioner that the enlarged photograph showing the alleged pen-lift had been deliberately produced to mislead the Court in the case. Mr. Muthukrishna attempted to offer an explanation for the error in the photograph, but I do not think the explanation was in any way satisfactory. But, there is nothing to show that he was personally responsible for the pen-lift shown in the

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enlarged photograph or that the pen-lift had been deliberately produced in order to mislead the Court. In re-examination, Mr.Muthukrishna stated that he had compared the signature on P11 with the standards produced by Counsel for the Petitioner as well as the standards R45a and R46a and that he found seven identifying characteristics in all standards, none of which was present in the disputed signature on P11. In particular, he pointed out to the formation of the letters "TH" in "Vethecan". The formation of "TH" appears to be the most noticeable characteristic in every one of the admitted signatures, but this was not found in the disputed one. That feature is so very noticeable that one wonders whether any forger would have omitted to reproduce it. But, if the forger did not have before him at the time of the forgery a specimen of the signature he was attempting to forge, it may well be that he overlooked that feature. In any event, it is difficult to explain why, if the signature of Vethecan in P11 is a genuine one, a feature which is present in every one of the standards extending over a period of years was omitted by Mr.Vethecan in this particular signature. However, quite apart from the absence of this feature in the signature "C.Vethecan" on P11 and quite apart from the opinion expressed by Mr.Muthukrishna, I find on the evidence in this case that the last Will P11 was not the act and deed of the deceased and that the signature of the deceased on P11 is a forgery.

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I answer the Issues as follows :-

1. No.
2. No.
3. Does not arise.

I dismiss the petition of the Petitioner and confirm Order Absolute that has already been entered in this case.

The Petitioner will pay the Respondent the costs of these proceedings.

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Sgd: V.Siva Supramanian  
A.D.J.

28th September, 1956.

Delivered in Open Court in the presence of Mr. Adv. V.C. Gunatilleke for the Petitioner and Mr. Jayasuriya Proctor for Respondent.

Sgd: V.Siva Supramaniam  
A.D.J.

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No. 52.

PETITION OF APPEAL OF MRS.E.L.PEIRIS

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

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IN THE MATTER OF THE LAST WILL AND TESTAMENT OF SELLAPPERUMAGE WILLIAM FERNANDO of Kaldemulla, Moratuwa, deceased.

D.C.Colombo  
No. 15908  
Testamentary  
Jurisdiction.

Millie Agnes de Silva  
of 27/3, Melbourne Avenue,  
Colombo 4. Petitioner

In the Supreme Court of Ceylon

No.52.

Petition of Appeal of Mrs.E.L.Peiris.

9th October, 1956.

IN THE MATTER OF AN APPLICATION FOR THE RECALL OF REVOCATION OF PROBATE

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Evelyn Letitia Peiris of Angulana Station Road, Moratuwa Objector-Petitioner

Vs.

Millie Agnes de Silva of 27/3, Melbourne Avenue, Colombo 4. Petitioner-Respondent

Evelyn Letitia Peiris of 37, Angulana Station Road, Moratuwa Objector-Petitioner-

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Vs. Appellant

Millie Agnes de Silva of 27/3 Melbourne Avenue, Colombo 4. Petitioner-Respondent

On this 9th day of October, 1956

To THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the Supreme  
Court of Ceylon

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Mrs.E.L.Peiris.

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The Petition of Appeal of the Objector-Petitioner-Appellant appearing by her Proctor P.M.Paul Pillai states as follows :-

1. This was a testamentary action in respect of the estate of one Sellapperumage William Fernando who died on 22nd February, 1954 leaving Nancy Catherine (2nd wife) his widow and two children, the Respondent by the 1st wife and the Appellant by the 2nd wife. His estate is valued at -  
Rs.97,441/67. 10

2. The Respondent applied for probate as Executrix of last Will No.454 (R34) dated 13.5.50, under which she was the sole devisee, and obtained Order Absolute on 16.6.54. The Appellant filed objections on 8.7.54 to have the order cancelled on the ground that the deceased had made a subsequent last Will No.474 (P11) of 4.6.51 the protocol of which was produced, and asked that Probate be granted in terms of P11.

3. The matter came up for enquiry on 19.9.55 on two issues:- 20

(a) Was the last Will R.34 revoked?

(b) Did the deceased execute the last Will P11?

4. No issue was raised by the Respondent, but her contention was that the signature of the deceased and the signature of one of the witnesses who had died since were forgeries.

5. After trial the Learned District Judge held that the signature of the deceased only was a forgery and dismissed the Petition of the Appellant and confirmed the Order Absolute and ordered the Appellant to pay the costs of the proceedings. 30

6. Aggrieved by such judgment the Appellant begs to appeal for the following among other reasons that may be urged by Counsel at the hearing in appeal :-

(a) The said judgment is contrary to law and against the weight of evidence in the case.

(b) The deceased was an ordinary carpenter (baas) to whom good luck came after his marriage with Nancy, and he made money as a contractor thereafter. He was temperamental and impulsive, changed his mind after making promise and did not adhere to one proctor but had recourse to several as his moods prompted him. 40

(c) The last Will (P11) was attested by Proctor Tudugala and the two attesting witnesses were Proctor Devapuraratne and Proctor C.Vethecan. In support of her case the Appellant called both direct and indirect evidence of the making of P11 viz:-

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(i) proof of an intention of the deceased to make another testamentary disposition (P11) by the evidence of such witnesses as the retired Village Headman Victor Fernando, the confidante of the deceased;

(ii) the direct evidence of Proctors Tudugala and Devapuraratne (Proctor Vethecan being dead) of the actual execution of P11 and

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(iii) evidence of respectable witnesses to prove statements made by the deceased after the last Will P11, that the deceased had left his properties to his two daughters to be taken after his death, such as the witnesses Proctor A.V.Fernando, Revd.Wickremanayaka and Revd. Dhammaloka, the Neelammahara priest.

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(d) The deceased had married his second wife, Nancy Catherine, in 1917 and the Respondent had attempted to elope with one Joseph de Mel, which was prevented by Nancy and the deceased. In 1934 Millie (the Respondent) was given in marriage to one Silva, an architect, and about that time the deceased transferred certain properties in her favour on R1 and R2 and shortly thereafter some properties in favour of the Appellant on R3 and R4. The deceased was annoyed when the Appellant eloped with Peiris in January 1940 and married him. Suspecting that his wife had a hand in the matter the deceased left home, made a last Will R9 of 1.2.40 making the Respondent, the Executrix and sole devisee and left for Matale where his estate Naugala was and where later he bought an estate called Highwalton. He took a mistress Maria Aponso and thereafter another, Marina Fonseka, with whom he entered into an agreement R8 of 1942 and lived with his mistress during the rest of his life.

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(e) The deceased however forgave the Appellant for whom he bought a set of pearls, but apparently as she identified herself with the mother in a divorce case filed by Nancy Catherine against the deceased in 1944 R5 - R7 the deceased gave instructions in 1946 to Raymonds (R10) that his wife was not to have any hand in his funeral and made another last Will (R34) in 1950 and subsequently incorporated his instructions to Raymonds in R34.

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(f) Whether it was due to an immediate cause like the familiarity of the Respondent after her husband's death with her chauffeur or because he felt, with death approaching, that he should be just by his only two daughters, he made the impugned last Will P11 in 1951.

(g) There is clear and uncontradicted evidence that the deceased had wanted to transfer Naugala Estate in about 1950 to the children of the Appellant and also that he did in fact give her Rs.15,000/- in October 1952 because she had not been given a dowry by him. The deceased has also gifted a house in Melbourne Avenue, Colombo to the Respondent on R30 of January 1953; and about 3 years prior to his death he returned from Matale and lived again in Moratuwa where he died.

(h) The deceased had not used specific expression, that he was making or had made the last Will P11, but he had used language from which the several witnesses understood that the disposition was a last Will.

(i) Victor Fernando was a particular friend of the deceased. He had intervened at the instance of the deceased in the divorce case. The Learned District Judge does not reject his evidence about what the deceased told him and was wrong in holding that his evidence did not disclose that the deceased had manifested his intention to make a testamentary disposition. Rev. Wickremanayake's evidence has been accepted by the learned Judge and it is submitted that that evidence indicates the testamentary disposition. Proctor A.V.Fernando is one of the leaders of the Panadura Bar and a J.P.U.M., and no reason was suggested either in cross-examination or in the address of Counsel for the Respondent for rejecting his evidence. The Learned District Judge had no reason whatsoever not to accept his evidence. Mr.Fernando specifically stated that the deceased told him in 1952 that he had made provision for the two daughters equally to take effect after his death. The other witness was Rev.Dhammaloka, the Neelammahara Priest, from whom admittedly the deceased took treatment for his last illness. The Learned Judge was wrong in holding that he was not a frank or reliable witness.

(j) Proctor Tudugala is a Proctor of 20 years standing. He had taken to politics some years ago and been the Chairman of the Urban Council of Kolonnawa. He had created for himself political enemies. Reference was made to an insolvency case

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10 filed at their instance 15 years ago, and he could not remember the details of the evidence he had given in that case. There was an arrangement made by his mother by which he was to be paid a certain sum of money which he referred to as a life-interest as it was so for all practical purposes, though it was not legally in the form of a life-interest. It is submitted that the Learned District Judge erred in holding that his evidence could not be  
 20 accepted. A witness to the last Will was Mr. Devapuraratne, a Proctor of 19 years standing. There was nothing in his evidence to show that his evidence was not true and the Learned District Judge was wrong in not accepting his evidence. The other attesting witness was Proctor C. Vethecan who is dead. The only attempt made to suggest that he did not attest the document was to challenge his signature by the evidence of the handwriting expert, Mr. Muthukrishna. The Learned District Judge for obvious reasons does not hold that it was not Mr. Vethecan's signature.

(k) Quite apart from this evidence, the Appellant gave evidence that she identified her father's signature on P11 (See p. ). There was no cross-examination of her on this point. By way of contrast the Respondent who was the other daughter did not have the courage to state in her evidence that the signature on P11 was not that of her father.

30 (l) There was thus nothing to negative the evidence of the Appellant and of her witnesses except the evidence of the handwriting expert, which the Learned District Judge quite correctly states he would not be justified in accepting. Indeed the report of Mr. Muthukrishna, which was put in by the Respondent's Counsel as the last document (R65) significantly did not state that the signature on P11 was not that of the deceased.

40 (m) The last Will P11 was a natural last Will. The widow was left a legacy of Rs.5,000/- only, because she had been troubling the deceased consistently requesting him to give up his mistresses and return to her. The legacy of Rs.2,000/- to the Deaf and Blind School was given because the deceased had assisted certain Church charities and he felt he should do something more as he had not fulfilled other such promises. John to whom he had left a legacy of Rs.1,000/- had been his faithful motor car driver for 18 years. He was a trusted servant

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whose daughter was adopted by the deceased and Marina on the writing P21 of May 1953. The deceased had given during his lifetime proportionately more to the Respondent than to the Appellant and he therefore left the residue equally to the Appellant and Respondent his only children, but he made the Respondent the elder daughter the executrix as in his previous Wills. It is submitted that the Learned District Judge was entirely wrong in holding that this last Will was an unnatural one. 10

(n) There was clear uncontradicted evidence that the deceased had about Rs. 60,000/- in his safe, money which he had received by the sale of property to one Vincent Corera. The evidence disclosed that the deceased had always a considerable sum of money in the safe in which he kept his deeds and other valuable documents. It is admitted that the Respondent came to the house of the deceased in his last illness and took charge of the keys etc. When the safe was opened in Court only a sum of Rs. 800/- was found in it and the Respondent admitted that she had removed some deeds from the safe. The bank balance of the deceased was Rs. 3801/20. There is little doubt that the Respondent had appropriated the large sum of money to herself and had destroyed the last Will P11, a circumstance which necessitated the proof of the last Will by the protocol found with Proctor Tudugala. 20

(o) There was literally a race between the Respondent and the Appellant. The deceased died on 22.2.54. On 26.2.54 the Respondent applied for order absolute in the first instance without making anybody a Respondent and there was no reference to any widow or other heir in the petition. The Learned District Judge however entered order nisi. A second attempt was made by the Respondent again to obtain order absolute in the first instance on 14.5.54. In this petition too there was no Respondent named, but the existence of the widow and the Appellant was disclosed only then. It was this second application which was granted on 16.6.54. Meantime the Appellant's husband was going to the Proctors in different parts of the Island with whom the deceased had dealings to ascertain if he had left a last Will. There is evidence among others he went to Proctor Samarasekera in Matale, Proctor Velupillai in Avissawella, Proctor Sathasivam in Nawinna and Proctors Wikesekera and A.V. Fernando in Moratuwa. It was finally at Proctor 30 40 50

Tudugala's that it was ascertained that the last Will for which the Appellant was searching had been made. Consequently it was only on 8.7.54 that application was made by the Appellant to revoke the order absolute by the production of P11. If the Appellant had decided to get a last Will forged, it is inconceivable that it should have been done after the order absolute had been made in respect of the probate of R34. It should have been done long before. The Learned District Judge has completely omitted reference to this part of the argument of the Appellant. He does not hold anywhere when the last Will P11 was forged nor did the Respondent or her Counsel suggest when it was forged.

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(p) On 20.2.54, two days before the Testator's death just before he was taken to the hospital by the Respondent, a letter P10 was sent to the Appellant purporting to be written by the Testator asking her not to come to see the Testator. The Appellant contended that the signature and the lower portion of the letter was not in her father's (testator's) handwriting as was contended by the Respondent, but that it was written by Simon the Respondent's employee and her son Lala. She complained to the Village Headman who made inquiry from Simon who admitted to him that it was fabricated by the Respondent and her son and that the Testator was in a state of complete unconsciousness at the time. At the time Respondent's evidence was that the Testator was quite conscious, that he got the upper part of the letter written by Simon and the Testator himself wrote the latter portion (Vide pages and ) and Simon himself supported the Respondent's version and suggested that the Village Headman had deliberately made a false entry. The Learned District Judge rejected the evidence of Simon, upheld the Village Headman's evidence and held that P10 was sent at the instance of the Respondent. This finding shows that the Respondent had fabricated a false document, was guilty of causing a document to be forged and deliberately gave false evidence and caused her employee to perjure himself. The Learned District Judge should not have given any credence to the rest of her evidence and it is submitted her entire evidence is not worthy of belief.

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(q) With regard to the handwriting expert's evidence called by the Respondent in support of her contention of forgery which occupied 3 or 4 days of

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Court of Ceylon

No. 52.

Petition of  
Appeal of  
Mrs. E. L. Peiris.

9th October,  
1956

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trial and ran into 71 pages, the Learned District Judge correctly holds he is not justified in acting on such evidence in regard to the signature of the Testator. In regard to the signature of the witness C. Vethecan, having held that Mr. Muthukrishna the expert had insufficient standards to express an opinion, that the main reason for his opinion was wrong and that Mr. Vethecan's signature was regularly irregular, the Learned District Judge leaves the conclusion he should have drawn in a delightfully vague state by posing a question of the possibility that a forger forged a signature without having any specimen before him. It is submitted with respect that such an absurd possibility was never suggested at any stage of the trial. He then proceeds to create a difficulty in his mind when he wrote the judgment in regard to the cross-bar in the letters "th" which difficulty the learned trial Judge himself disposed of in the course of the trial - Vide pages 10 20

(r) The evidence of Mr. Muthukrishna was that he saw a pen-lift in the letter V of the impugned signature of C. Vethecan and this he said proved that it was the work of a forger inasmuch, as there was a fresh piece of the writing or an added stroke (See pages ). He produced enlarged photographs R47 and enlarged drawings R51 to corroborate what he saw, which made a profound impression on the Court at the time. All objections taken to these drawings made at home by Mr. Muthukrishna were summarily overruled by the Learned District Judge. In cross-examination Mr. Muthukrishna, as the Learned District Judge holds, admitted that in fact there is no pen-lift and no added stroke, and that the original has not been tampered with. In re-examination he ventured to offer an explanation which the Learned District Judge held was not in any way satisfactory. Counsel for the Respondent in his address had nothing to say to explain this. The Learned District Judge who in regard to the witnesses of the Appellant had no hesitation in rejecting evidence or characterising them false, no matter whether the witness was a respectable person or whether there were contradictions in the evidence or not, did not draw the normal and reasonable inference that Mr. Muthukrishna was responsible for this or that his evidence was false. 30 40

(s) It is submitted in any case that this proved that an attempt had been deliberately made on behalf of the Respondent to create false documents and mislead the Court. If the Learned District 50

Judge had only given his mind to the fact that the Respondent had caused the forging of the deceased's signature on P10 and an attempt had been made on her behalf to create false evidence and mislead the Court, he could not have accepted her evidence or held that the last Will P11 was a forgery.

10 (t) The Learned District Judge has misdirected himself both on the question whether the year in which the deceased came to reside in Kaldemulla permanently in a material point for decision, and also on the actual year when he did take up his residence permanently. All the witnesses said they could not remember the exact year. They were giving evidence several years later. As far as they remembered it was in 1950 or 1951. When in cross-examination it was suggested the date was after the sale of Naugala Estate they said it might be so because they could not remember the exact date. The deceased may have left Matale and come  
20 to reside in Kaldemulla in 1950 or 1951 perhaps after the sale of High Walton, but gave up all connections with Matale when he sold Naugala Estate in June 1952. If the Learned District Judge had considered the bathing incident and the meeting under the portico uninfluenced by his conclusion with regard to when exactly the deceased returned to Kaldemulla permanently, he would have had no difficulty in believing the two incidents and would have accepted the evidence of John Appuhamy and Alo  
30 Nona and not held that this was a malicious fabrication.

(u) Having formed his theory thus, the Learned District Judge seems to have been overtaken by the feeling that he must disbelieve or reject the evidence of most respectable witnesses who had no motive or interest in giving any evidence that was untrue e.g. Proctor A.V.Fernando and Revd.Dhammaloka Thero. Having done that he proceeded further to disbelieve the evidence of Proctor Tudugala,  
40 Proctor Devapuraratne and the Appellant, Nancy Catharine and Peiris wrongly.

(v) The deceased harboured a dislike of his wife Nancy because she was constantly reminding him to give up his mistress Marina and return to her. He sometimes identified the Appellant with the mother because she had to be loyal to her mother, but that he had changed his attitude towards the Appellant and was no longer resentful is proved by the admitted fact that he bought her a  
50 pearl set of jewellery (see pages ). The

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Learned District Judge has completely omitted reference to this, and holds incorrectly that the deceased was not on cordial terms with the Appellant even in 1946 by reasons of a document R11 an undated letter addressed to some unknown person which the Appellant doubted contained the deceased's signature.

(w) A good deal of the Learned District Judge's conclusions are based on speculation. With reference to the unquestioned evidence that the deceased had intended and made preparations to donate some valuable properties to the Appellant's Children, the Learned District Judge wonders why such a disposition was not made in the Last Will and why Proctor A.V.Fernando or the retired Village Headman did not give an explanation in regard to the deceased not carrying out his intention. It was not included in the last Will because the deceased wanted to make the gift inter vivos and no explanation was asked of Proctor Fernando or the Village Headman as to why he did not execute the deed. Admittedly the deceased was temperamental and acted whimsically (see page ).

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(x) The Learned District Judge had misinterpreted the evidence of Revd.Wickremanayake and was wrong in rejecting the evidence of the retired Village Headman, John Appuhamy and Aloe Nona and should have accepted the evidence of the Appellant, Nancy and Austin Peiris. There was nothing in their cross-examination to suggest they were giving anything but truthful evidence.

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(y) If the old last Will R34 of 1950 stood there was no necessity for the deceased to transfer the house in Melbourne Avenue to the Respondent on R30 of 1953 as she was the sole devisee under that last Will. The explanation of the Respondent for the transfer was a lame one and should have been rejected.

The evidence of P.C.Gurupatham tended to show that he did not know the deceased or his house and the document R13 which he spoke to indicated that it was not a complaint made by the deceased.

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There was no doubt that Inspector Caldera acted in a high handed manner at the funeral house because representations had been made to him by a Proctor for the Respondent; and when he realised his mistake he sought to cover himself by trying to get a statement from the widow (R14) which she declined to sign.

Wherefore the Appellant prays that your Lordships' Court be pleased to set aside the judgment of the Learned District Judge and the order absolute entered by him, hold that the last Will R34 had been revoked by the last Will P11, order that probate be granted in terms of last Will P11 and enter decree for the Appellant as prayed for with costs and such other and further relief as to Your Lordships' Court shall seem meet.

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Sgd: P.M.Paul Pillai

Proctor for Objector-Petitioner-Appellant

Settled by -

Sgd: G.D.Weerasinghe,  
Advocate.In the Supreme  
Court of Ceylon

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No. 53.

JUDGMENT OF THE SUPREME COURT.IN THE SUPREME COURT OF THE ISLAND OF CEYLONS.C. 245/'56 (Inty)

D.C. Colombo Testamentary Case No.15908.

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Present: Gunasekara, J., and Sansoni, J.Counsel: Sir Lalita Rajapakse, Q.C., with  
G.D.C.Weerasinghe, Colin Mendis  
and N.R.M. Daluwatte for AppellantD.S.Jayawickrema, Q.C., with  
Clarence de Silva and P.  
Navaratnarajah for RespondentArgued: 29th and 30th September, 1st,  
2nd, 3rd and 13th October, 1958.Decided: 16th December, 1958.

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Gunasekara, J.

The main issue that had to be decided by the District Judge was the second one, namely,

"Did the deceased execute the last Will No.474 of 4.6.51?"

It was formulated in these terms by Sir Lalita Rajapakse, who appeared for the Appellant at the inquiry in the District Court, and was agreed to by Mr.Navaratnarajah, who appeared for the Respondent.

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After the issues had been framed Sir Lalita stated that he would lead evidence to propound the Will reserving the right to lead evidence in rebuttal if necessary, and Mr. Navaratnarajah stated that his position was that what purported to be the signatures of the deceased S.W. Fernando and an attesting witness, Vethecan, were forgeries. At the close of the inquiry the learned Judge answered the second issue in the negative, holding that the impugned Will was not the act and deed of the deceased and that what purported to be his signature on it was a forgery.

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It was contended before us on behalf of the Appellant that it was not open to the District Judge to arrive at this finding for the reason, it was urged, that no issue of forgery had been framed at the inquiry and such a question was not involved in the issues that were tried. I am unable to accept this contention. It is clear from the proceedings at the inquiry that both parties understood the second issue as raising the question whether the impugned Will was a forgery. The witnesses called on behalf of the Appellant to prove its execution were cross-examined upon the footing that there was an issue as to the genuineness of what purported to be the signatures of the deceased and Vethecan; a handwriting expert called on behalf of the Respondent gave evidence on that issue without any objection being taken by the Appellant's Counsel, who cross-examined the witness at length on the question of the genuineness of the signatures; an application was made by the Appellant's Counsel for leave to call in rebuttal a handwriting expert to give evidence on this very question; and it appears from the Learned Judge's order on that application that Sir Lalita himself contended that the second issue "really consists of two issues as follows:-

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- (1) Did the deceased execute the Will? and
- (2) Are the signatures of the Testator and the witness Vethecan on the said Will forgeries?"

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Mr. Vethecan had died before the Appellant made her application for probate of the impugned Will. The attesting notary Mr. Tudugala and the other attesting witness Mr. Dewapuraratna gave evidence on behalf of the Appellant to prove the execution of the Will and the genuineness of the signatures in question. They have been disbelieved

by the learned District Judge and it is contended on behalf of the Appellant that there was no sufficient ground for the rejection of their evidence.

10 The estate has been valued at Rs.97,441. The impugned Will provides for the payment of legacies of Rs.5,000 to the deceased's widow (who is the Appellant's mother), Rs.2,000 to the School for the Deaf and Blind at Ratmalana and Rs.1,000 to the deceased's chauffeur John, and provides that after the payment of these legacies and funeral and testamentary expenses the residue should be divided equally between the Appellant and the Respondent (who are half-sisters and the only children of the deceased).

The learned Judge holds that in the light of the relations that existed at the material time between the deceased and his wife and daughters, and of other circumstances, this will is an unnatural one.

20 A last Will executed by the deceased on the 1st February 1940 left all his property, movable and immovable, to the Respondent. It is common ground that at that time the deceased had fallen out with the Appellant and her mother. The Appellant had eloped with a man whom the deceased did not consider to be a suitable match for her and the deceased had suspected his wife of having helped them to elope and had left her. He and his wife always lived apart thereafter and were never reconciled.

30 On the 16th August 1941 they entered into a deed of separation, and two years later she sued him for a divorce on the ground of adultery. In this litigation she was helped by the Appellant and the Appellant's husband. In August 1944 the parties arrived at a settlement in pursuance of which the action was dismissed. On the 14th March 1946 the deceased entered into an agreement with a firm of undertakers for the conduct of his funeral, stipulating particularly that his wife "should have no hand in the arrangements".

40 Just four years later, on the 13th March 1950, he executed a fresh Will, again leaving his entire estate to the Respondent but also directing her as the Executrix to carry out the terms of his agreement with the undertakers. He stated in that Will that he had "already made provision" for his second daughter, the Appellant. (He had given the Respondent a dowry on the occasion of her marriage in January 1934 and had in October of the same year gifted to

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the Appellant, then a girl of twelve, a dwelling-house and an estate of 42 acres, subject to the life-interest in favour of her mother, and he had also given her jewellery).

About these facts, which show the relationship between the parties up to the 13th May 1950, there is no dispute. Having examined the evidence bearing on the state of the deceased's feelings towards his wife and daughters in the period subsequent to that date the learned Judge holds that he is satisfied "that until about September or October 1952 there had been no change in the relationship between the Petitioner and the deceased and that not only the widow but the Petitioner also was at arm's length from the deceased". He concludes that "A change in relationship could not, therefore, have been a motivating cause for the execution of a Will in June 1951 altering the dispositions contained in the earlier Will of 1950". He also holds "that between 1940 and the time of his death the deceased was very much attached to the Respondent and that at no stage was the relationship between them anything but cordial".

The Appellant sought to prove that in June 1951, when according to her case the impugned Will was executed, the deceased was gravely displeased with the Respondent because he had discovered that there was an undue friendship between her and her chauffeur and she had refused a request made by the deceased that she should terminate the man's employment. After a careful examination of the evidence on the point the District Judge has held that "the whole story is a malicious fabrication by the Petitioner and her witnesses in order to provide a motive for altering the dispositions contained in Will R34" (the Will of 1950). One of these witnesses was the deceased's chauffeur John. The learned Judge considers it to be unlikely that the deceased would have left a legacy to John (who is not mentioned in the Will of 1950) when he had left nothing to a woman named Marina Fonseka, who had been looking after him for many years. He also holds that the leaving of a legacy to a charitable institution is not in keeping with the character of the deceased as disclosed in the evidence.

There appears to be no sufficient ground for disturbing the findings of fact upon which the learned Judge has based his conclusion that the impugned Will is an unnatural one, and it seems to me that this conclusion is warranted by those findings.

According to Mr. Tudugalla, it was about the beginning of 1950 that he first met the deceased William Fernando. That was at Mr. Tudugalla's house in Sedawatta, where a client of his named John Perera had brought the deceased in order that Mr. Tudugalla might ask him to give John Perera 2 weeks' time to pay a debt. After that he had met him at an office in Belmont Street, Hulftsdorp, which Mr. Tudugalla shared with another proctor, Mr. Wijesekera. The deceased used to visit Mr. Wijesekera there and Mr. Tudugalla says that he used to meet the deceased on such occasions.

Mr. Tudugalla's account of the circumstances in which he happened to attest the impugned Will is as follows - The deceased came to the office in Belmont Street at about 9.30 a.m. or 10 a.m. on the 4th June 1951 to meet Mr. Wijesekera, but missed him. Having waited for Mr. Wijesekera for a while he told Mr. Tudugalla that he wanted to make a Will and that he was in a hurry and could not wait any longer for Mr. Wijesekera. He asked Mr. Tudugalla to prepare the Will and he said that he wanted to execute it on that very day. Mr. Tudugalla took down his instructions on a loose sheet of paper, because the book that he would ordinarily have used for the purpose happened to be in his house and not in the office on that day, and he asked the deceased to return in the afternoon. The deceased came back between 12.30 p.m. and 1 p.m. and the Will was then ready for signature. Mr. Tudugalla explained it to the deceased and asked him to bring two witnesses who were known to both of them. The deceased suggested that Mr. Vethecan could be one and he brought Mr. Vethecan to the office. After that Mr. Dewapuraratne happened to pass that way and Mr. Tudugalla called him and asked him if he knew the deceased. Mr. Dewapuraratne said that he knew him and Mr. Tudugalla then explained the Will to the deceased again in the presence of the two witnesses. Thereafter the Will was duly signed by all of them.

Mr. Tudugalla says that the deceased wanted the Will to be given to him immediately but Mr. Tudugalla told him that he had to check it and write out the attestation and asked him to call for it between 4 p.m. and 4.30 p.m. The deceased left and came again at 4.30 p.m. and took away the original of the Will.

This document was not produced in Court. It was suggested on behalf of the Appellant that the

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Respondent, who had access to deceased's safe, had obtained possession of it. Mr.Tudugalla produced what purported to be the protocol that had remained in his possession.

According to the Respondent the deceased had told her about the execution of the Will of 1950 and told her also that he had made her his sole heir; and until after the deceased's death the original of that Will was in the custody of Mr. Felix de Silva of the firm of de Silva and Mendis, who was the attesting notary. There appears to be no reason to doubt the truth of this evidence, for that Will was produced in Court 4 days after the deceased's death, annexed to a petition filed by Messrs. de Silva and Mendis on the Respondent's behalf. It seems to be unlikely in all the circumstances that the deceased would have left the impugned Will in a safe to which the Respondent had access rather than leave it in the custody of Mr. Tudugalla.

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The Appellant claims to have learnt on the day of the deceased's death that he had left a last Will under which his estate was to devolve on her and the Respondent. She got this information, she says, from a person named Victor Fernando, who according to her was a particular friend of the deceased. But it was only 4 months later that she was able to place before the Court evidence of the execution of such a Will. If the deceased did make the Will in question, not only did he refrain from disclosing that fact to her but it does not appear that he revealed to anyone known to her the identity of the notary who attested the instrument. According to the case for the Appellant it was only after a prolonged investigation by her husband, Austin Peiris, that they discovered that the attesting notary was Mr.Tudugalla.

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Austin Peiris had been a proctor's clerk in Colombo having been at one time employed by a proctor who was the Secretary to the Law Society, to work both for him and for the Society, and later by the firm of Messrs. Julius and Creasy. He had worked for these employers for a total period of about 6 years, according to him, from about 1934 till about 1940, but he did not know Mr.Tudugalla (who had been in practice from 1929) until he met him in May 1954 in the course of his search for William Fernando's Will. He had gone to the Belmont Street Office, he says, to find out whether Mr.Wijesekera had attested such a Will and had

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failed to meet him but met Mr. Tudugalla. On that occasion, according to both Tudugalla and Peiris, the latter introduced himself as William Fernando's son-in-law and asked Tudugalla if he had attested a Will by which William Fernando left his estate to his two daughters, and Mr. Tudugalla actually gave him the information. He did so notwithstanding that he not only had no right to give it, but was giving it to a complete stranger, and he did not even know at the time that William Fernando was dead. Later, according to them, Mr. Tudugalla gave him a certified copy of the document after he had verified that William Fernando was dead and that the name of a son-in-law of his was Austin Peiris, but without satisfying himself as to the identity of the stranger who claimed to be that Austin Peiris.

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The learned District Judge holds that Peiris is an "entirely untruthful witness" and rejects as false the evidence of his alleged search for a Will executed by the deceased and discovery of such a Will attested by Mr. Tudugalla.

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As regards Mr. Tudugalla the learned Judge states that the general impression that Mr. Tudugalla created on him in the witness box was most unfavourable, and that "he was lacking in candour and did not hesitate to contradict his earlier answers if he found they were inconsistent with the position he was seeking to adopt". This latter observation is borne out by the record of the evidence. "The impression left on me by Mr. Tudugalla by the time he left the witness box", says the judge, "was that he is unworthy credit".

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The lack of candour to which the learned Judge refers is illustrated by the manner in which Mr. Tudugalla answered certain questions relating to his own past. He first denied and then admitted that he knew a lady by the name of Mrs. Jayalath. He next denied that he had given her a written promise of marriage, and then said he could not remember if he had, and finally conceded that he might have done so by a letter dated the 16th March 1939. He admitted that he had later borrowed from her a sum of about Rs. 1,935 and did not return it until she had sued him for it and obtained judgment. (He explained in re-examination that she had "given" him about Rs. 10,000 and he had returned the whole of it except a sum of Rs. 1935 "when the promise fell off". She had promised him "a dowry of lakhs

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and lakhs" he said, but it "did not materialize"). He denied that he had been engaged to her for 2 or 3 years but when he was confronted with an earlier statement alleged to have been made by him, in a case where he had been adjudicated an insolvent, he admitted the possibility that he may have been engaged to her for 2 or 3 years. He admitted that he had failed to satisfy a judgment for debt that had been obtained against him by one Kannangara, but said that he could not remember whether in consequence he had been arrested on a warrant and brought to Court. He then conceded that he might have been arrested on a warrant, and when he was questioned further on the point he said he still had a doubt as to whether he had been arrested. He was then confronted with evidence that he had given in the insolvency case and he admitted that he had been brought to court upon a warrant of arrest and had been discharged upon his stating to the Court that he had a life interest in certain property. Other admissions made by him show that that statement was untrue.

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Mr.Dewapuraratne too is a proctor. He had been in practice since 1937 but worked as a short-hand writer as well. He used to charge a fee for attesting a signature, and he says that he attested the signature in question for a fee of Rs.10.50 which was paid by the deceased. He had been a friend of Mr.Tudugalla's from 1922 and, according to him, the deceased had been introduced to him by Mr. Tudugalla, that happened, he said, on an occasion when he went to Mr. Wijesekera's office and missed Mr.Wijesekera but met Mr.Tudugalla and found the deceased with him. Mr. Tudugalla introduced the deceased as Mr. Fernando the "Indian Baas", a soubriquet he had earned by making a fortune in India. As regards the extent of his acquaintance with the deceased, Mr. Dewapuraratna said that he had met him once or twice before the 4th June 1951, he had seen him in that office but never talked to him, and he thought he might be able to recognise a photograph of him. Later he also said that he had talked to him on the day on which they were introduced to each other. He corroborated Mr. Tudugalla's account of the circumstances in which he signed the impugned Will, and he said that Mr. Tudugalla asked him whether he was willing to sign a Will as a witness and he replied "I am quite happy to attest the Will of the person who was introduced to me as Indian Baas". When he was asked in examination in chief who the Testator was he looked at the Will and said it was Mr.Fernando.

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The learned District Judge holds that he is unable to accept Mr. Dewapuraratne's evidence that he knew the deceased and that the deceased signed the Will in question in his presence.

The Appellant herself purported to identify the disputed signature as her father's, but the learned Judge holds that he cannot place any reliance on her testimony on that point.

10 In my opinion no case has been made out for a reversal of the District Judge's findings in regard to the credibility of these witnesses.

20 The Appellant also adduced the evidence of three witnesses who spoke to statements which they said were made to them by the deceased after June 1951. The witnesses were the Reverend Dhammaloka Thero, the Reverend B.M. Wikramanayake and a Prosecutor, Mr. A.V. Fernando. The Appellant relied on their evidence to prove that the deceased had made declarations to the effect that he had made a Will by which he left all his property equally to his two daughters.

The learned Judge disbelieved the Reverend Dhammaloka Thero, and his finding rejecting the evidence of this witness was not canvassed in appeal. The learned Counsel for the Appellant stated that he could not ask that that finding should be set aside.

30 The Reverend Mr. Wikramanayake was the parish priest of Moratuwa, where the deceased (who too was a Christian) spent the last few years of his life, and Mr. A.V. Fernando was one of the wardens of the church. According to Mr. Wikramanayake, whose evidence has been accepted by the learned Judge, he had visited the deceased, both by himself and in the company of Mr. Fernando, and they had received from him on the 5th August 1952 a donation of Rs. 1,500 towards the cost of a chapel. On a later visit, in September or October 1952, at a time when the deceased was ill, Mr. Wikramanayake had spoken to him about the Appellant and advised 40 him to make his peace with God and man and not leave anyone with a grievance against him when he was dead. The deceased replied that he had attended to all that. I am unable to accept the contention advanced on behalf of the Appellant that this statement meant that the Appellant would be a beneficiary under the deceased's Will.

Mr. A.V. Fernando had been in practice as a

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proctor for 32 years at the time when he gave evidence and was a justice of the peace and an un-official Magistrate. "The evidence of a witness of his standing", the learned Judge observes, quite rightly if I may say so, "Will not be lightly dismissed and deserves careful consideration". Mr. Fernando stated that after his visit to the deceased with the Reverend Mr.Wikramanayake he visited him by himself on some day after August 1952 and on that day the deceased told him "that he had made provision for his two daughters equally to take effect after his death".

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If the deceased had made a Will containing such a provision he certainly did not at any time disclose that fact to the Appellant. It does not appear that there was any occasion for him to confide to Mr.Fernando information that he did not impart even to the Appellant as to the provisions of such a Will. Anything that he may have said about the provisions made by him for his daughters could only have been a statement made casually and the possibility that Mr.Fernando carried away a wrong impression of a casual remark about a matter that did not interest him cannot, I think, be ruled out. The learned Judge holds that he is unable to accept Mr.Fernando's evidence that the deceased told him what Mr.Fernando says he did. I can see no sufficient ground for a reversal of this finding of fact by the Judge of first instance.

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The Appeal must be dismissed with costs.

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Sgd: E.H.T. Gunasekara,  
Puisne Justice.

Sansoni, J. I agree.

Sgd: M.C.Sansoni,  
Puisne Justice.

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Decree of the Supreme Court.

19th December, 1956.

No. 54.

DECREE OF THE SUPREME COURT

S.C.245/'56 (Inty)

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER OTHER REALMS AND TERRITORIES, HEAD OF THE COMMONWEALTH.

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IN THE SUPREME COURT OF THE ISLAND OF CEYLON  
IN THE MATTER OF THE LAST WILL AND TESTAMENT of  
SELLAPPERUMAGE WILLIAM FERNANDO of KALDEMULLA,  
Moratuwa, Deceased.

Millie Agnes de Silva of 27/3,  
Melbourne Avenue, Colombo 4. Petitioner

In the Supreme  
Court of Ceylon

IN THE MATTER OF AN APPLICATION for the  
RECALL OR REVOCATION OF PROBATE

No.54.

Evelyn Letitia Peiris of Angulana  
Station Road, Moratuwa Objector-Petitioner

Decree of the  
Supreme Court.

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Millie Agnes de Silva of 27/3,  
Melbourne Avenue, Colombo 4. Petitioner-Respondent

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10 Evelyn Letitia Peiris of Angulana  
Station Road, Moratuwa  
Objector-Petitioner-Appellant

Vs.

Millie Agnes de Silva of 27/3,  
Melbourne Avenue, Colombo 4. Petitioner-Respondent-Respondent

Action No.15908/Testy. District Court of Colombo

20 This cause coming on for hearing and deter-  
mination on the 29th and 30th September, 1st-3rd  
and 13th October and 16th December, 1958, and on  
this day, upon an appeal preferred by the Objector-  
Petitioner-Appellant before the Hon.E.H.T.Gunasek-  
ara, and the Hon.M.C.Sansoni, Puisne Justices of  
this Court, in the presence of Counsel for the  
Objector-Petitioner-Appellant, and Petitioner-Re-  
spondent-Respondent.

It is considered and adjudged that this appeal  
be and the same is hereby dismissed.

30 And it is further decreed that the Objector-  
Petitioner-Appellant do pay to the Petitioner-Re-  
spondent-Respondent the taxed costs of this appeal.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief  
Justice of Colombo, the 19th day of December, in  
the year One thousand nine hundred and fifty-eight  
and of Our Reign the Seventh.

Sgd: B.F.Perera

Deputy Registrar, S.C.

In the Supreme  
Court of Ceylon

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IN THE SUPREME COURT OF CEYLON

No. 55.

No.55.  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council.

APPLICATION FOR CONDITIONAL LEAVE TO  
APPEAL TO THE PRIVY COUNCIL

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16th January,  
1959.

(Not printed)

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(Not printed)

No.56.

No. 56.

Decree granting  
Conditional  
Leave to Appeal  
to the Privy  
Council.

DECREE GRANTING CONDITIONAL LEAVE TO  
APPEAL TO THE PRIVY COUNCIL

---

23rd January,  
1959

(Not printed)

---

(Not printed)

No.57.

No. 57.

Application for  
Final Leave to  
Appeal to the  
Privy Council.

APPLICATION FOR FINAL LEAVE TO  
APPEAL TO THE PRIVY COUNCIL

---

11th February,  
1959.

(Not printed)

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(Not printed)

497.

No. 58.

DECREE GRANTING FINAL LEAVE TO APPEAL  
TO THE PRIVY COUNCIL

---

In the Supreme  
Court of Ceylon

---

No.58.

S.C.Application No.88.

ELIZABETH THE SECOND, QUEEN OF CEYLON AND  
OF HER OTHER REALMS AND TERRITORIES, HEAD  
OF THE COMMONWEALTH.

Decree granting  
Final Leave to  
Appeal to the  
Privy Council.

4th March,  
1959.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10

IN THE MATTER OF AN APPLICATION dated  
11th February, 1959, for Final Leave  
to Appeal to Her Majesty the Queen  
in Council by the Objector-Petitioner-  
Appellant against the Decree dated  
16th December 1958.

08

Evelyn Letitia Peiris of  
Angulana, Station Road,  
Moratuwa Objector-Petitioner-Appellant  
APPELLANT

against

20

Millie Agnes de Silva of  
No.27/3, Melbourne Avenue,  
Colombo 3.  
Petitioner-Respondent-Respondent  
RESPONDENT

Action No.15908/Testy (S.C.245 - Inty)

District Court of Colombo.

30

This cause coming on for hearing and deter-  
mination on the 4th day of March, 1959, before the  
Hon. K.D. de Silva and the Hon. H.N.G. Fernando,  
Puisne Justices of this Court, in the presence of  
Counsel for the Petitioner.

It is considered and adjudged that the appli-  
cation for Final Leave to Appeal to Her Majesty  
the Queen in Council be and the same is hereby  
allowed.



In the Supreme  
Court of Ceylon

            
No.58.

Decree granting  
Final Leave to  
Appeal to the  
Privy Council.

4th March, 1959  
- continued.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief  
Justice at Colombo the 9th day of March in the  
year One thousand nine hundred and fifty-nine and  
of Our Reign the Eighth.

Sgd: B.F. Perera  
Deputy Registrar, Supreme Court.

TRUE COPY

Sgd: J.N. Bulasinghe  
REGISTRAR, SUPREME COURT,  
CEYLON.

10

January 18, 1960.

Stamps to the value  
of Rs. 28/-

The Seal of the  
Supreme Court of  
the Island of  
Ceylon.

---

E X H I B I T SP.l. - NOTARIAL AGREEMENT NO.591.Application No. D5412  
15.9.55.

No. 591

Exhibits

P.l.

Notarial  
Agreement  
No.591.16th August,  
1941.

10

This Indenture made and entered into at Colombo on this Sixteenth day of August One thousand nine hundred and forty one by and Between Husband Sella-pperumage William Fernando of Nancy Villa Kaldemulla in Moratuwa (hereinafter sometimes called and referred to as the party of the first part) and the Wife Colombapatabendige Nancy Catherine Charlotte Perera presently of Pannipitiya (hereinafter sometimes called and referred to as the party of the second part)

Witnesseth

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Whereas unhappy differences had arisen between the said parties of the first and second parts and they have mutually agreed as they do hereby agree henceforth to live apart from each other for the future and separate themselves from bed, board, cohabitation and do enter into such arrangements as hereinafter expressed.

And whereas the said parties of the first and second parts have one child named Evelyn Letitia Fernando.

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And whereas the said party of the first part had conveyed and transferred property of the value of Rupees Sixty thousand (Rs.60,000/-) to his wife the said party of the second part subject to the conditions that on her death the same shall devolve on the said Evelyn Letitia Fernando.

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Now This Indenture Witnesseth that in pursuance of the said agreement and in consideration of the premises and of the covenants hereinafter contained on the part of the said party of the second part, the said party of the first part do hereby for himself his heirs, executors and administrators covenant promise and agree to and with the said party of the second part in manner and form the following that is to say :-

That it shall and may be lawful to and for the said party of the second part from henceforth during her natural life notwithstanding her coverture to live separate and apart from the said party of

Exhibits

P.1.

Notarial  
Agreement  
No.591.16th August,  
1941

- continued.

the first part as if she were a femmesole and that she shall henceforth be free from the Control and authority of the said party of the first part and that it shall be lawful for her to reside and be in such place or places and family and families and with such relations and friends and other persons and to carry on such trade and business as the said party of the second part from time to time shall think fit.

And that the said party of the first part shall not nor will at any time or times hereafter require her the said party of the second part to live with him or institute any legal proceedings or take any other steps whatsoever for that purpose and will not in any wise molest or interfere with the said party of the second part in her manner of living or otherwise

And that he the said party of the first part and his aforewritten shall and will well and truly pay unto the said party of the second part

(a) A sum of Rupees Five hundred (Rs.500/-) at the execution of these presents and shall hand over a sum of Rupees One thousand five hundred (Rs.1500/-) immediately after the execution of these presents which said sum of Rupees One thousand five hundred (Rs.1500/-) the said party of the second part shall hold and engage herself to pay the said party

of the first part in the event of the said party of the second part molesting or obstructing the said party of the first part in any way hereafter,

(b) So long as she the said party of the second part does not molest or obstruct the said party of the first part a further monthly allowance of Rupees Twenty five (Rs.25/-) to be paid on or before the 16th day of each and every succeeding month commencing from the 16th day of September 1941

during the term of her natural life for and towards her better support but so nevertheless that the said monthly sum shall cease if the marriage between the said parties of the first and second parts shall at any time hereafter be dissolved by

a Court of competent Jurisdiction in further pursuance of the said agreement and in consideration of the premises the said party of the second part covenants with the said party of the first part that the said party of the second part shall not at any time hereafter commence or prosecute any action or other proceedings for compelling the said party of the first part to live with her or to allow her any support maintenance or alimony

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excepting the said sum allowed for her maintenance as stated above and that she the said party of the second part shall not molest the party of the first part in any manner at any time hereafter

Exhibits

P.1.

Notarial Agreement No.591.

16th August, 1941

- continued.

10 And the said parties of the first and second parts are mutually agreed that the one will not be responsible for any debts or liabilities which the other shall contract but that each shall be alone responsible for any debts or liabilities which any one of them shall contract and that the said party of the second part covenants that she shall during the continuance of the said separation keep indemnified the said party of the first part from and against all debts and liabilities hereafter to be contracted or incurred by the said party of the second part

20 In Witness whereof the said parties of the first and second parts have hereunto and to two others of the same tenor and date as these presents set their respective hands at Colombo on this Sixteenth day of August One thousand nine hundred and forty one.

Signed in the presence of us )  
and we do hereby declare that )  
we are well acquainted with ) Sgd:  
the executant and know his ) S. William Fernando  
proper name occupation and ) (In Sinhalese)  
residence )

Sgd: Illegibly

30 Sgd: L. James Perera  
(In Sinhalese)

Sgd: T. Terance Fernando  
Notary Public.

Signed by the above-named Colombapatabendige Nancy Catherine Charlotte Perera the second executant on this Eighteenth day of August One thousand nine hundred and forty one at Colombo.

40 Signed in the presence of us )  
and we do hereby declare that )  
we are well acquainted with ) Sgd:  
the executant and know her ) Nancy Catherine  
proper name occupation and ) Charlotte Perera  
residence ) (In Sinhalese)

Sgd: Illegibly

Sgd: Illegibly

Sgd: T. Terance Fernando  
Notary Public.

Exhibits

P.1.

Notarial  
Agreement  
No.591.

16th August,  
1941

- continued.

I, Tevaratantirige Terence Fernando of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over by me the said Notary to the within-named Executant Sellaperumage William Fernando who has signed this deed in Sinhalese characters and who is not known to me in the presence of Victor Henry Peter Fernando Village Headman Kaldemulla in Moratuwa and Liyanage James Perera of Kaldemulla in Moratuwa who have signed as V.H.P. Fernando and in Sinhalese characters respectively the subscribing witnesses thereto and both of whom are known to me the same was signed by the said Executant and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo aforesaid this Sixteenth day of August One thousand nine hundred and forty one

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I further certify and attest that both in the Original and Duplicate hereof etc.,

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x            x            x            x  
x            x            x            x

Date of Attestation  
16th day of August, 1941.

Sgd: T.Terance Fernando  
Notary Public.

SEAL.

I, Tevaratantrige Terence Fernando of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the within-named Executant Colombapatabendige Nancy Catherine Charlotte Perera who has signed this deed in Sinhalese characters and who is not known to me in the presence of Manfred Charles Francis Peiris of No.796 High Level Road Nugegoda and Loku Banda Navaratne Hulawe of Maharagama Pannipitiya who have signed as "M.C.F.Peiris" and "L.B.N.Hulawe" the subscribing witnesses thereto and both of whom are known to me the same was signed by the said Executant and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Colombo on this Eighteenth day of August One thousand nine hundred and forty one

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And I further certify and attest that the sum of Rupees Two thousand (Rs.2000/-) was paid to the said Colombapatabendige Nancy Catherine Charlotte Perera in cash in my presence.

Date of Attestation

16th day of August, 1941.

Sgd: T.Terance Fernando  
Notary Public.

(SEAL)

I, K.E. Silva Addl. Registrar of Lands, Colombo, hereby certify that the foregoing is a true copy of the Deed of Agreement made from the duplicate filed of record in this office and the same is granted on the application of S.M. Paul Pillai.

Sgd: Illegibly:  
Addl. Registrar of Lands

Land Registry  
Colombo.  
16th September, 55.

Exhibits

P.1.

Notarial  
Agreement  
No.591.

16th August,  
1941

- continued.

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20. P.2. - LETTER FROM S.W.FERNANDO TO VILLAGE HEADMAN

Nawgala Estate,  
Yatawatte.  
22.5.50.

P.2.

Letter from  
S.W. Fernando  
to Village  
Headman.

With thanks.

22nd May, 1950.

I write very earnestly to Kaldemulla Ralahamy when I was in the village my Dulcie sent a letter to me stating their worries, I thought about it, that a task of this nature should be done. That is so because as they will be unable to make any use in future of money given to their hands. Therefore this is my intention. I expect to deposit this money on condition that the money to be taken after going with the mother when children attains due age, that the monies to be confiscated if they cause me any trouble during my lifetime, after doing this act, and so on. Therefore, I beg of you kindly to explain these matters to the mother and daughter after getting them to you, or else by going to see them, and let me have a reasonable reply. I am writing this as my time is passing on now. I have thought of this way. If they agree, it will be done before another six months.

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Exhibits

P.2.

Letter from  
S.W.Fernando  
to Village  
Headman.

22nd May, 1950  
- continued.

Further delay will make this impossible.

Yours faithfully,

Sgd: S.William Fernando.

Translated by -

Sgd: Illegibly  
S.T.D.C.

28.7.54.

P.3.

Letter from  
S.W.Fernando to  
Mrs.E.L.Peiris.

7th October,  
1952.

P.3. - LETTER FROM S.W.FERNANDO TO MRS.E.L.PEIRIS

This for Dulcie. That rubber land examined  
for purchasing is not good. I gave it up you must  
listen to this word. I am writing as good people  
will not borrow money for higher interest. The  
money can be given in good security at 8% interest  
to the person to whom I have spoken who will send  
the interest home monthly. If you agree to it let  
me know anyone of you can examine the land later  
if necessary, after my going and discussing the  
same, you can give for higher interest to rogues  
but the people I mention are much better.

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This is myself.

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7.10.52.

Translated by -

Sgd: Illegibly  
S.T.D.C.

28.7.54.

P.4.

Letter from  
S.W.Fernando to  
Mrs.E.L.Peiris.

18th November,  
1952.

P.4. - LETTER FROM S.W.FERNANDO TO MRS.E.L.PEIRIS

18.11.52.

This is to inform Dulcy, Daughter, as you are  
entreating me so much, come between 7 and 8 p.m.  
on Friday before 8 o'clock, don't tell anyone. If  
you come by cart the gate will be kept open.

30

This is father.

Translated by -

Sgd: Illegibly  
S.T.D.C.

23.9.54.

P.5. - LETTER FROM S.W.FERNANDO TO MRS.E.L.PEIRIS.Exhibits

This is for Dulcy. I received your letter to-day. But if I get you down as you want, I will have many troubles. So I got to act, avoiding all those things. I will inform you a good date. I will let you know a time to come by about 7 or 8 in the night. You must come suddenly just as by force. Nothing else to be done.

P.5.  
Letter from  
S.W.Fernando to  
Mrs.E.L.Peiris.  
Undated.

Your father.

10 Translated by -  
Sgd: Illegibly  
S.T.D.C.  
23.9.54.

---

P.6. - LETTER FROM S.W.FERNANDO TO MRS.E.L.PEIRIS.

P.6.

This for Dulcie. The Proctor has written to me that there is a good rubber estate of 60 acres, owned by a good gentleman. He demands Rs.15000/- at 8% interest on a mortgage for it. Ask him to go and see the Proctor. It is a good land.

Letter from  
S.W.Fernando to  
Mrs.E.L.Peiris.  
Undated.

Your father.

20 Translated by -  
Sgd: Illegibly.  
S.T.D.C.  
23.9.54.

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P.7. - LETTER FROM S.W.FERNANDO TO MRS.E.L.PEIRIS.

P.7.

This is to write and inform Dulcy: If you come, come with a boy. No harm even if you fail to come to-day. Darly did not say anything about this. But my mind will be worried in the evening. It is good if you come later, without coming today or tomorrow. I can't say whether I will get ill by this time. If you come, do so at about quarter to eight. That time I feel pain in the body and won't be able to speak. No harm in passing one or two days more. My head is full of worries on these two or three days. It is better if you come after another 4 days.

Letter from  
S.W.Fernando to  
Mrs.E.L.Peiris.  
Undated.

Father.

30 Translated by -  
Sgd: Illegibly  
S.T.D.C.  
23.9.54.

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ExhibitsP.8. - NOTARIAL AGREEMENT NO. 583

P.8.

No.583.Notarial  
Agreement  
No.583.18th November,  
1952.

THIS INDENTURE made and entered into at Moratuwa on this Seventeenth day of October One thousand and nine hundred and fifty two by and between the Husband Sellapperumage William Fernando of Kalde-mulla in Moratuwa (hereinafter sometimes called and referred to as the party of the first part) and Wife Colombapatabendige Nancy Catherine Charlotte Perera of Laxapathiya in Moratuwa (hereinafter sometimes called and referred to as the party of the second part)

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## WITNESSETH:-

Whereas the parties of the first and second parts had prior to the execution of these presents by Deed of Agreement No.591 dated 16th August 1941 attested by T.Terrance Fernando Notary Public settled their differences and mutually agreed upon to observe the terms and conditions therein specially laid down.

And Whereas subsequent to the execution of the said Agreement No.591 in action No.820/D of the District Court of Colombo instituted at the instance of the party of the second part it was ordered and decreed that the party of the second part do observe the terms of the said Agreement No.591 and that neither she nor any person on her behalf would at any time thereafter endeavour to compel the said party of the first part to allow the said party of the second part any alimony or maintenance further than the sum of Rs.25/- per month provided in the said Agreement and that the said party of the second part shall not molest the said party of the first part in any manner thereafter.

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And Whereas the party of the first part in consideration of the party of the second part duly observed the terms of the said agreement No.591 has of his own free will voluntarily increased the said monthly payment of Rs.25/- per mensem by a further sum of Rs.25/- and had hitherto been paying unto the said party of the second part the sum of Rupees Fifty (Rs.50/-) per mensem for her maintenance.

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And Whereas in consideration of the party of the second part having duly performed the terms of the said Agreement No.591 hitherto as so directed by the decree of the said Court in Action No.820/D

and in consideration of her further undertaking to comply with the terms of the said Agreement and to obey the directions in the said decree of Court in the said Action No.820/D for the further period of the lifetime of the party of the first part the party of the first part has of his own free will consented to give to the party of the second part at the execution of these presents a sum of Rupees Five thousand (Rs.5,000/-) in addition to the monthly payment of Rupees Fifty (Rs.50/-) which has hitherto been paid.

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NOW THIS INDENTURE WITNESSETH that in pursuance of the said Agreement and in consideration of the said premises and of the covenants hereinafter contained the party of the first part doth hereby for himself his heirs executors and administrators covenant and promise and agree to and with the said party of the second part in manner and form following:-

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(1) That the party of the first part shall allow the party of the second part to live separately and apart from the said party of the first part in terms of the covenants laid down in the said Deed No.591.

(2) That the party of the first part shall of his own free will give her a further sum of Rupees Five thousand (Rs.5,000/-) immediately after the execution of these presents.

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(3) That the party of the first part shall continue to pay the party of the second part the said sum of Rupees Fifty (Rs.50/-) which he has hitherto paid unto the party of the second part on or before the 16th day of each and every month during the term of her natural life in addition to the said lump sum of Rupees Five thousand (Rs.5,000/-) to be paid to her after the execution of these presents.

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(4) That the party of the second part shall duly perform observe and fulfil the terms and conditions laid down in the said Deed No.591 and comply with the directions of Court made in the said decree in action No.820/D of the District Court of Colombo.

(5) That the parties of the first and second parts do hereby mutually covenant and agree as follows:-

(a) That each of the said parties doth

Exhibits

P.8.

Notarial  
Agreement  
No.583.18th November,  
1952

- continued.

Exhibits

P.8.

Notarial Agreement No.583.

18th November, 1952  
- continued.

hereby on his or her part as the case may be confirm and ratify the terms and conditions laid down for the observance and fulfilment thereof by him or her as the case may be in the said Agreement No.591 except as so far as they are qualified or modified by the terms of this Agreement.

(b) That in the event of the party of the second part molesting or obstructing the said party of the first part in any way hereafter or in the event of any other breach of non-compliance of the further terms and conditions as contained in this deed of agreement the party of the second part doth hereby hold and engage and undertake to pay to the party of the first part the said sum of Rupees Five thousand (Rs.5,000/-) to be given to her immediately after the execution of this agreement together with the sum of Rupees One thousand five hundred (Rs.1,500/-) which the party of the second part held and engaged herself to pay to the party of the first part under the said Deed No.591.

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(c) That in the event of the party of the first part predeceasing the party of the second part the party of the first part doth hereby bind himself his heirs executors administrators to continue to pay the said monthly payment of Rupees Fifty (Rs.50/-) out of his estate unto the party of the second part during the full term of her natural life.

IN WITNESS whereof the said parties of the first and second part have hereunto and to three of the same tenor and date as these presents set their respective hands at the places and on the dates hereunto written

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WITNESSES -

Signed by the said Nancy Catherine Charlotte Perera at Moratuwa on this Seventeenth day of October One thousand nine hundred and fifty two in our presence -

This is the signature of Nancy Catherine Charlotte Perera.

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- 1. Signed: C.A. Peiris
- 2. Signed: W.G. Lows.

Sgd: P.E.S.Wijesekera.

N.P.

Signed by the said Sellapperumage ) This is the  
William Fernando at Moratuwa on ) signature of  
this Eighteenth day of November, ) Sellapperumage  
One thousand nine hundred and ) William  
fifty two in our presence - ) Fernando

Exhibits  
P.8.

Notarial  
Agreement  
No.583.

- 1. This is the signature of  
Sellapperumage Henry Fernando
- 2. Sgd. Joe de Silva.

18th November,  
1952

- continued.

Sgd: P.E.S.Wijeyesekera  
N.P.

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I, Placidus Edwin Samson Wijeyesekera of Moratuwa in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the within-named executant Colombapatabendige Nancy Catherine Charlotte Perera who is known to me and who signed her name in Sinhalese in the presence of Dombagahapathirage Charles Austin Peiris of Laxapathiya in Moratuwa and Warnakulasuriya Gabriel Lows of Moratuwella in Moratuwa who signed their names as "C.A.Peiris" and "W.G. Lows" respectively the subscribing witnesses there-  
to both of whom are also known to me the same was signed by the said executant and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present together at the same time at Moratuwa on this Seventeenth day of October One thousand nine hundred and fifty two

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And I further certify and attest that in the 1st Original on page etc.,

x	x	x	x
x	x	x	x

Date of Attestation  
17th October, 1952.

Sgd: P.E.S.Wijeyesekera  
Notary Public.

SEAL.

I, Placidus Edwin Samson Wijeyesekera of Moratuwa in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the within-named executant Sellapperumage William Fernando who is known to me and who signed his name in Sinhalese characters in the

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Exhibits

P.8.

Notarial  
Agreement  
No.583.18th November,  
1952

- continued.

presence of Sellapperumage Henry Fernando of Kaldemulla in Moratuwa and Simon Michael Vincent Joe de Silva of Kalalana in Moratuwa the first named of whom signed his name in Sinhalese and the latter as "Joe de Silva" the subscribing witnesses thereto both of whom are also known to me the same was signed by the said executant and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Moratuwa on this Eighteenth day of November One thousand nine hundred and fifty two.

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Date of Attestation -  
18th November 1952.

Sgd: P.E.S.Wijeyesekera  
Notary Public.

(SEAL)

True copy to which a stamp of Rs.1/- is  
affixed.

Moratuwa 17th March 1954.

Sgd: P.E.S.Wijeyesekera  
Notary Public.

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(SEAL)

P.9.

P.9. - MORTGAGE NO.586Mortgage No.586. Prior Registration:- A 324/24629th October,  
1952.

Amount Rs.15,000/-

No.586.

KNOW ALL MEN BY THESE PRESENTS that We Arthur Peiris Malalanayake of "Free Hills" Malamulla in Panadura, Phillip Edward Perera of Midland Group Bandaragama Don David Wickrema of Alutgama Bandaragama (hereinafter sometimes referred to as the Obligors) are jointly and severally held and firmly bound unto Evelyn Letitia Peiris of Laxapathiya in Moratuwa (hereinafter referred to as the Obligee) in the sum of Rupees Fifteen thousand (Rs.15,000/-) of lawful money of Ceylon for money borrowed and received by us from the said Obligee (the receipt whereof we do hereby admit and acknowledge) we therefore hereby renouncing the beneficium non numeratae pecuniae do hereby engage and bind ourselves our heirs executors administrators to repay on demand unto the said Evelyn Letitia Peiris or to her certain attorneys executors administrators or assigns the said sum of Rupees Fifteen thousand

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(Rs.15,000/-) with interest thereon at and after the rate of Ten (10) per centum per annum Provided however that if the interest shall be paid regularly and quarterly on the due dates hereinafter mentioned the mortgagee shall accept the same at and after the reduced rate of Eight (8) per centum per annum to be computed from this date, which said interest is payable on the Twenty ninth days of January April July and October of each and every year commencing from the Twenty ninth day of January 1953 now next ensuing.

Exhibits

P.9.

Mortgage No.586.

29th October,  
1952

- continued.

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AND for securing the payment of the said principal sum and interest and all other moneys that may become due and payable under or by virtue or in respect of these presents we the said Obligors do hereby specially mortgage and hypothecate to and with the said Obligees her heirs executors administrators and assigns as a first or primary mortgage free from any encumbrances whatsoever and subject to the conditions hereinafter mentioned all those contiguous lots marked A.B.C. and D. comprising a defined Western half share Lot as per Plan No.10970 dated the 1st, 2nd and 3rd days of November 1930 made by Mr. B.M. Falmer Caldera Licensed Surveyor together with all the buildings trees plantations soil bungalows machinery fixtures furniture tools implements cattle carts and other the dead and live stock and all the crops coupons and produce thereof standing thereon called and known as Nawalawatta Palle Nawalahena Alutwatta Halgahawatta and Ketiyyagoda Gampanguwa now called and known as "Nawala Estate" registered at the Rubber Controller's Office under Number 143 E R 55 situated at Karandana and Epitawala Villages in the Meda Pattu of Kuruwiti Korale and more fully described in the Schedule hereto together with all rights servitudes members appurtenances to the said Estate right title interest property claim and demand whatsoever of the said Obligors into out of or upon the said premises.

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AND WE the said Obligors do hereby covenant and declare with and to the said Obligees and her afore-written that the said premises hereby mortgaged and every part thereof are in no wise encumbered and that we have good right to mortgage the same as aforesaid and that we shall and will at any time hereafter during the continuance of the mortgage hereby created do and execute all such further and other acts deeds matters and things for the better or more perfectly assuring the said premises

Exhibits

P.9.

Mortgage No.586.

29th October,  
1952

- continued.

by way of mortgage unto the said Obligee and her  
aforewritten as by her or her aforewritten shall  
or may be reasonably required and that the said  
Obligors shall during the subsistence of the  
mortgage hereby created well and carefully keep  
and maintain the said premises and appurtenances  
thereof in a good carefully husbandlike manner and  
in proper order and repair and will not execute  
any other mortgage or any lease touching the said  
premises or commit any act or deed whereby or by  
reasons whereof the rent income or issue thereof  
may be in anywise encumbered without the consent  
in writing of the said Obligee or her aforewritten  
first had and obtained thereto and any such lease  
mortgage or encumbrance executed without such con-  
sent shall be absolutely null and void.

10

AND WE the said Obligors do declare further  
to engage and bind ourselves our heirs executors  
and administrators for the true performance of the  
foregoing obligations.

20

IN WITNESS WHEREOF We the said Arthur Peiris  
Malalanayake Philip Edward Perera and Don David  
Wickrema do hereunto and to two others of the same  
tenor and date as these presents set our hands at  
Moratuwa on this Twenty ninth day of October One  
thousand nine hundred and fifty two

THE SCHEDULE ABOVE REFERRED TO

All those contiguous Lots marked A, B, C and  
D comprising a defined Western half share Lot as  
per Plan No. 10970 dated the 1st, 2nd and 3rd days  
of November 1930 made by Mr. B.M. Falmer Caldera  
Licensed Surveyor together with all the buildings  
trees plantations soil bungalows machinery fixtures  
furniture tools implements cattle carts and other  
the dead and live stock and all the crops coupons  
and produce thereof standing thereon and known as  
Nawalawatta Palle Nawalahena Alutwatter Halgahawat-  
ta and Ketiyangoda Gampanguwa now called and known  
as "Nawala Estate" registered at the Rubber Con-  
troller's Office under name 143 E 1 R 55 situated  
at Karandana and Eritawala Villages in the Meda  
Pattu of Kuruwiti Korale in the Ratnapura District  
of the Province of Sabaragamuwa and which said  
defined Western half share Lot is bounded on the  
North by Lot No.688 in B.S.P.P. 219 Lot No.654 in  
B.S.P.P. 219 Dickdeniya Ela land described in T.P.  
No.368917 Lot Nos.661 and 6552 in B.S.P.P.219 and  
Kiriweddana hena Ela on the East by the defined  
Western half share Lot comprising of Lots E, F, G,

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Exhibits

P.9.

Mortgage No.586.

29th October,  
1952

- continued.

10 H and J on the South by Maladola and Lot 688 in B.S.P.P. 219 and on the West by land in T.P. No. 368756 Lot No.688 in B.S.P.P.219 and Nugadande in B.S.P.P.220 containing in extent Sixty five acres three roods and twenty eight perches (65A.3R.28P.) together with all our rights to the existing approach road leading from the Cart road which branches off from the P.W.D. Panadura-Ratnapura Road to Karandana to the said property hereby mortgaged which approach road is in use by us and by our predecessors in title from time immemorial. Held and possessed by us the said mortgagors and by virtue of Deed No.6985 dated 11th July 1944 and attested by D.R. de S. Abeyenayake of Colombo Notary Public and Registered at the Land Registry Ratnapura in Volume A 256/67 formerly A 235/113.

Witnesses:-

Sgd: C.A. Peiris

Sgd: A. Peiris

Sgd: Joe de Silva

Sgd: Philip E.Perera

Sgd: D.D. Wickrema

20

Sgd: P.E.S. Wijeyesekera  
N.P.

30 I, Placidus Edwin Samson Wijeyesekera of Moratuwa in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the said Obligors Arthur Peiris Malalanayake Philip Edward Perera and Don David Wickrema who are known to me the same was signed by the said executants as "A.Peiris" "Philip E. Perera" and "D.D.Wickrema" respectively in the presence of Charles Austin Peiris of Laxapathiya in Moratuwa and Simon Michael Vincent Joe de Silva of Kadalana Moratuwa the subscribing witnesses thereto both of whom are also known to me and who signed as "C.A.Peiris" and "Joe de Silva" respectively the same was signed by the said Obligors and by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Moratuwa  
40 on this Twenty ninth day of October One thousand nine hundred and fifty two

And I further certify and attest that before the foregoing Instrument was read over and explained as aforesaid in the Duplicate etc.,

x

x

x

x

I further certify that the consideration herein



Exhibits  
P.9.  
Mortgage No.586.  
29th October,  
1952  
- continued.

mentioned was paid as follows:-

- |     |                        |             |          |
|-----|------------------------|-------------|----------|
| (1) | By Cheque No. G 356024 | Rs. 8,000/- |          |
| (2) | By Cheque No. G 346025 | Rs. 6,000/- |          |
| (3) | By Cheque No. G 676452 | Rs. 1,000/- | all      |
|     |                        |             | 15,000/- |

dated 29th October 1952 drawn on the Bank of Ceylon Colombo by S. William Fernando in favour of the Obligee and which were duly endorsed by her and delivered to the Obligors and that the Duplicate of this Instrument etc.,

10

x x x x

Which I Attest

Sgd: P.E.S.Wijeyesekera  
Notary Public.

(SEAL)

Date of Attestation

29th October 1952.

True copy on a stamp of Rs.1/-

Sgd: P.E.S.Wijeyesekera  
Notary Public.

(SEAL)

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P.10.

P.10. - LETTER FROM S.W.FERNANDO TO MRS.E.L.PEIRIS

Letter from  
S.W.Fernando  
to Mrs.E.L.  
Peiris.

790.

20th February,  
1954.

This is for Dulcy.

You don't come to see me according to this time. If you come my illness may be serious. If that becomes serious later I will send you a message to come. Come and see at that time. You don't go and worry him after going to see your elder brother. I am a little better.

x x x x x  
x x x x  
x x x  
x x  
20.2.54.

30

Translated by -

Sgd: Illegibly  
S.T.D.C.  
23.9.54.

P.12. - STATEMENT OF S.W. FERNANDO

791.

P.12.Exhibits

P.12.

On the 25th day of February 1940.

KNOW ALL MEN BY THESE PRESENTS that I, the undersigned S. William Fernando of Kaldemulla Moratuwa have from this day handed over the possession of the lands which I did transfer by virtue of a Deed of Gift; some days ago, unto my wife Nancy Catherine Charlotte Perera and my daughter Evelyn Letitia Fernando. Those lands are situated at the villages called, Laxapathiya and Kaldemulla in Moratuwa.

Statement of  
S.W.Fernando.  
25th February,  
1940.

Further the land called Pinane Gallewatta, situate at Udabeddawa in Kurunegala District will be handed over by the first day of next March

My wife Nancy Catherine Charlotte Perera is authorised from this day, to enjoy possession, just as the house rents, the coconuts and other fruits of the lands have been possessed and taken previously.

Sgd: S. William Fernando.

Translated by -

Sgd: Illegibly  
S.T.D.C.  
10.11.55.

P.13. - RECEIPT GIVEN BY INSPECTOR OF POLICE

24.2.54.

P.13.

I, A.F.Flamar Caldera, Inspector of Police, Mount Lavinia have taken charge of one Iron Safe duly sealed with the seals provided by Mrs.J.F.L. de Silva and Mrs.S.William Fernando and car No. EL4615 and the following :- One Gold Watch Chain with one Gold Dollar, One Sovereign, one half Sovereign, One Gold Ring with a Yellowish Stone, One Gold Ring with a blue stone and One Cheque Book (Bank of Ceylon) bearing Cheque leaves H 761190 to H 761200, One Silver waist chain about 12 ft. in length. The car mentioned above has a spare wheel.

P.13.  
Receipt given  
by Inspector  
of Police.  
24th February,  
1954.

Sgd. A.F.Flamer Caldera  
24.2.54.

Witnesses -

1. Sgd. Illegibly
2. Sgd: Illegibly

ExhibitsP.16. - COMPLAINT BY MRS.E.L.PEIRIS

P.16.

P.16.

Complaint by  
Mrs.E.L.Peiris.  
3rd March,  
1954.

The copy of the complaint made on 3.3.1954 by Evelyn Letitia Peiris of No.37, Laxapathiya, Moratuwa.

This day at about 12 a.m. Evelyn Letitia Peiris of No.37, Laxapathiya, came and complained as follows:- On the morning of the 20th day of last month, a letter has been sent to me as if it were written by my father by the manager named Simon. I understood that it was not my father's handwriting. Headman, please go and inquire from Simon, and let us know at whose instigation that letter was written.

10

Read over and signed.

Sgd: In English E.L.Peiris.

Sgd: Illegibly

V.H. 548.

Translated by -

Sgd: Illegibly

S.T.D.C.

9.2.56.

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P.17.

P.17. - REPORT OF M.D.SIMON PERERA

794.

P.17.

Report of  
M.D.Simon  
Perera.  
3rd March,  
1954.

The copy of the inquiry made into the complaint of Evelyn Letitia Peiris of No.37, Laxapathiya.

The complaint made on 3.3.54 was inquired into at about 6.30 p.m. on 4.3.54. I went to Nancy Villa where the manager Simon Perera is residing at present to meet him and to inquire into the complaint. I met him there and he stated:- "the letter sent by me to Mrs.Dulcie was so done at the request of the three people Mrs.Silva, her son Mr.Iala and Mr.Peiris. It was not at the request of my master." When that letter was written my master was in a state of complete unconsciousness.

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This was read over before it was signed.

Sgd: in English H.W.Perera

Sgd: Illegibly

V.H.548.

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Translated by:

Sgd: Illegibly

S.T.D.C.

9/2/56.

P.18. - COMPLAINT BY MRS.N.C.C.FERNANDO

795.

Exhibits

P.18.

P.18.

Complaint by  
Mrs.N.C.C.  
Fernando.

24th February,  
1954.

TRANSLATION

1954. February, Wednesday 24.

On this date at about 6.30 a.m. the person  
Nancy Catherine Charlotte Fernando residing at No.  
37 Iaxapathiya came and informed,

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Officers from the Police Station Mount Lavinia  
came and forcibly removed the iron safe, car and  
some gold jewellery from house No.84 belonging to  
my husband without agreeing to my request and with-  
out giving a list of the articles in the iron safe  
when I asked for it. This is not as a complaint  
but for the headman to come and produce it when  
required. Having read to the complainant obtained  
the signature.

Sgd: Nancy Catherine Fernando.

Translated by me -

Sgd: Illegibly.

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Interpreter D.C.Colombo.

18th Feb. 1956.

P.21. - STATEMENT OF S.W.FERNANDO AND MARINA FONSEKA

P.21.

P.21.

Statement of  
S.W.Fernando  
and Marina  
Fonseka.

8th May, 1953.

30

WE two, the undersigned S.William Fernando  
Marina Fonseka both of "Nancy Villa" in Kaldemulla  
do hereby declare that we have taken the child  
called Ganegodage Dayrlin to be adopted from her  
parents Ganegodage John Appuhamy and Sellie Maga-  
rette Fernando and further promise to look into the  
welfare of that child in future.

On the 8th day of May 1953 at Kaldemulla

Sgd: S.William Fernando

Sgd: Marina Fonseka

On a /6 cts stamp.

Witness:- M.D.Simon Perera

Translated by:

Sgd: Illegibly

S.T.D.C.

23.9.54.

ExhibitsP.22. - DEED NO.491

P.22.

P.22.

Deed No.491.  
22nd November,  
1951.

Prior Registration A 200/213  
No.491.

TO ALL TO WHOM THESE PRESENTS SHALL COME  
Nariman Kaikhushru Choksy K.C., Colombo in the  
Island of Ceylon (hereinafter called the Vendor  
which term shall where the context so requires or  
admits mean and include the said Nariman Kaikhushru  
Choksy his heirs executors and administrators. 10

SENDS GREETING

WHEREAS the Vendor is seised and possessed of  
and otherwise well and sufficiently entitled to all  
that the house and premises bearing Assessment No.  
27/3 situated at Melbourne Avenue within the Muni-  
cipality and District of Colombo (in the Schedule  
hereto fully described and hereinafter called the  
said premises")

AND WHEREAS the Vendor entered into a deed of  
agreement bearing No.485 dated the 19th September 20  
1951 and attested by Felix de Silva of Colombo No-  
tary Public for the absolute sale and conveyance to  
Sellapperumage William Fernando of Kaldemulla, Laxa-  
pathiya in Moratuwa in the said Island (hereinafter  
called the Purchaser which term shall where the  
context so requires or admits mean and include the  
said Sellapperumage William Fernando his heirs ex-  
ecutors administrators and assigns) of the said  
premises at or for the price or sum of Rupees One  
hundred and eighteen thousand (Rs.118,000/-) on or 30  
before the Seventeenth day of November One thousand  
nine hundred and fifty one

AND WHEREAS the Purchaser paid to the Vendor  
a sum of Rupees Eleven thousand eight hundred  
(Rs.11,800/-) at the execution of the said Deed of  
Agreement and has called on the Vendor to execute a  
Deed of Conveyance in his favour.

Now Know Ye and These Presents Witness that  
the Vendor in pursuance of the said Agreement and  
in consideration of the said sum of Rupees One 40  
hundred and eighteen thousand (Rs.118,000/-) of  
lawful money of Ceylon (the receipt whereof the  
Vendor doth hereby expressly admit and acknowledge)  
doth hereby sell assign convey transfer set over  
and assure the said premises unto the Purchaser to-  
gether in particular with a right of way and pass-  
age for both Cart and foot traffic in and over the

twenty feet road reservation (in the Schedule hereto fully described) and all and singular the rights ways easements servitudes and appurtenances whatsoever to the said premises belonging or in anyway appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the Vendor of in to upon or out of the said premises and every part thereof

10

TO HAVE AND TO HOLD the said premises hereby sold and conveyed or expressed or intended so to be together with all and singular the appurtenances thereto belonging and in particular together with a right of way and passage for both cart and foot traffic in and over the said road reservation unto him the Purchaser absolutely and for ever

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AND the Vendor doth hereby covenant with the Purchaser that he now hath good right full power and authority to grant and convey the said premises hereby granted and conveyed or expressed or intended so to be unto the Purchaser in manner aforesaid and that the said premises are free from all encumbrances

AND that the Purchaser shall and may at all times hereafter peaceably and quietly possess and enjoy the said premises without any interruption or disturbance from or by the Vendor.

30

AND further that the Vendor shall and will at all times hereafter warrant and defend the title to the said premises and every part thereof against any person or persons whomsoever and shall and will at the request and cost of the Purchaser do and execute or cause to be done and executed all such further and other acts deeds and assurances matters and things whatsoever as shall or may be reasonably required for further and more perfectly assuring and vesting the said premises and every part thereof unto and in him the Purchaser

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THE SCHEDULE ABOVE REFERRED TO

All that and those the house and premises bearing Assessment No.27/3 Melbourne Avenue comprising Lot 8 in Survey Plan No.3356 dated February 1930 made by H.G.Dias Surveyor bearing Municipal Assessment No.385, 386/40A situated at Wellawatte within the Municipality and District of Colombo Western Province which said Lot 8 is a divided portion of

Exhibits

P.22.

Deed No.491.

22nd November,  
1951

- continued.

Exhibits

P.22.

Deed No.491.

22nd November,  
1951

- continued.

the within mentioned entire premises also bearing Municipal Assessment No.385/40A and 386/40A situated at Wellewatte within the Municipality and District of Colombo Western Province and which said Lot 8 is according to the situation and description thereof as contained in the said Plan No.3356 bounded on the North by Lot 7 (being a Partitioned Portion of the entire land) on the East by Lot 5 (being a partitioned portion of the entire land and called and known as "Melbourne House") on the South by the properties belonging to the heirs of William Dias, John de Krester, M.Ismail, E de Livera Mudaliyar and others and on the West by the road reservation 20 feet wide and containing in extent thirty one perches and eighty eight one hundredth of a perch A0. RO. P.31.88) together with the full free and absolute right and liberty of way and passage unto the said Vendee and his aforewritten as well as the owner or owners of the said Lot 8 in the said Plan for the time being and his or their respective servants or agents and all other persons with his or their permission in common nevertheless with all other persons having like right at all times hereafter by night or day and with or without horses cattle or other animals carts carriages motors or other vehicles of any description for all purposes whatsoever connected with the use and enjoyment of the said Lot 8 in the said Plan (howsoever used or occupied) to pass and repass along over and upon the said 20 feet road reservation (which forms the Western boundary of the said Lot 8 according to the said Plan No.3356) and the 30 feet road reservation (which forms the Northern boundary of the entire land divided or partitioned according to the said Plan No.3356) from the said Lot 8 to the seashore and from the seashore to the said Lot 8 as well as from the said Lot 8 to the Colombo Galle Road and from Colombo Galle Road to the said Lot 8 without any let or hindrance by the Vendor his heirs executors administrators or assigns or by any other person or persons whomsoever and all and singular the other ways rights privileges easements servitudes and advantages and appurtenances whatsoever to the said premises belonging or used or enjoyed therewith or reputed or known as part and parcel thereof

IN WITNESS whereof the said Nariman Kaikushru Choksy hath set his hand hereto and to two others of the same tenor and date as these Presents at Colombo this Twenty second day of November One

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thousand nine hundred and fifty one.

Exhibits

Witnesses -

P.22.

Sgd: M.D.de Silva

Sgd: N.K.Choksy

Deed No.491.

Sgd: Hen.A.J.Perera.

Sgd: Felix de Silva  
N.P.

22nd November,  
1951

- continued.

10

I, Felix Charles Aloysius Domingo de Silva of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over by the within-named executant Nariman Kaikhushru Choksy, K.C., (who has signed as "N.K.Choksy") in the presence of the subscribing witnesses thereto Maduwage Diananda de Silva Proctor and Heenatigala Aratchige John Perera both of Imperial Bank Buildings, Colombo (who have signed as "M.D.deSilva" and "Hen.A.J. Perera" respectively) all of whom are known to me the same was signed by the said executant and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid this Twenty second day of November One thousand nine hundred and fifty one

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I further certify and attest that before the same was read over as aforesaid that in the original etc.,

x x x x

that the consideration herein mentioned was acknowledged to have been received previously that Eleven stamps of the value of Rupees One thousand and eight hundred and eighty eight (Rs.1,888/-) were impressed on the duplicate of this Instrument etc.

30

x x x x

Date of Attestation

Which I attest

22nd November 1951.

SEAL.

Sgd: Felix de Silva

Notary Public.

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I, S.P.de Silva, Registrar of Lands Colombo hereby certify that the foregoing is a true copy of a deed of Transfer made from the duplicate filed of record in this office and the same is granted on the application of Mr. C.A.Peiris

Sgd: S.P.de Silva,  
Registrar of Lands,  
Colombo.

Land Registry,  
Colombo. 29.4.1954.



Exhibits

P.34.

Copy Evidence  
of Examiner of  
Questioned  
Documents in  
the District  
Court of Matara.  
8th March, 1951.

P.34. - COPY EVIDENCE OF EXAMINER OF QUESTIONED  
DOCUMENTS IN THE DISTRICT COURT OF MATARA.

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In the District Court of Matara.

Gintota Sarukkali Vitharanage Thilakapala of  
Gandara Plaintiff

No.20779

Vs.

Patabendige Leelawathie of Dondra presently of  
Gandara Defendant

8th March, 1951.

---

D-Muthukrishna Sworn, Examiner of Questioned  
Documents, Colombo.

10

I have been dealing with questioned documents since 1944. My father had been an Examiner of Questioned Documents for a very long time. I was an apprentice under him. (To Court: I got my training entirely from him). Under my father I worked. I worked under him right up to the time of his death - from 1944 to 1949, and thereafter I have been doing work. I also took a correspondence course from India and obtained a Diploma from the Allahabad University. My father had a considerable practice examining Questioned Documents. He used to figure in very important cases in the Island. I also have a good experience in examining these documents. In this case the Affidavit filed in D.C. Case No.20779 was given to me. It bears the admitted signature of the Petitioner and I was also given a motion to withdraw money. That had been filed in D.C.Matara Case No.19083. I had to look at the originals of these two documents from those two cases. I compared the two signatures namely on the motion and on the Affidavit with the signatures on the document which is in dispute. That is the promissory note sued upon in this case marked P.1. I examined these three documents very carefully and I submit my report which I produce marked X1 wherein I give my reasons. I have compared the signatures on these three documents. I am of opinion that the signature on P.1 is not in the hand of the writer of the two standards. I am quite certain of that. There are inherent defects in the signature itself which tend to throw doubt and suspicion on the signature, like the slope, hesitant movement, characteristic of a forgery.

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When a person attempts to forge it is done slowly and hesitantly. Unlike the smooth flowing hand which one would normally expect in an ordinary signature. This signature has not any of these characteristics. It is hesitant, laboured and unnatural. With regard to the standards, there is a full-stop after the letters " I produce an enlarged photograph of the questioned document, marked X1A. I produce the motion filed in D.C. Case No.19083 signed by the Petitioner marked X2, and the photograph marked X2A. I produce the Affidavit marked X3 signed by the Petitioner and the enlarged photograph of the signature on the Affidavit marked X3A. In X2 there is a full-stop after the full signature 'P.M.Leelawathie'. On X3 there is also the signature of P.M.Leelawathie. On the questioned document X1A, there is no full-stop in either of the signatures. In the questioned document, the Petitioner is purported to have signed in two places, one in the margin and on the stamp. On the margin, her signature reads as 'P. Leelawathie'. On the stamp, there is a signature 'P. Leelawathie' but underneath would be the letter ' ' which was letter suppressed. ' ' has been suppressed and ' ' has been put over ' ' ' ' ' ' has been suppressed. According to the document X1A it has been written over. A certain section of it has been written over in forging to give a pictorial appearance. This is a clumsy forgery. It is possible even for a layman to say that it is a forgery. (Witness reads from a passage from 'Gross') This signature has also been re-touched.

XXd (next day)

It is now 4 p.m. Further inquiry on 5.4.51.

Sgd: A.C. Gooneratne,  
D.J. 8.3.51.

5.4.51.

Same appearance as before.

D.Mutu Krishna, sworn, recalled.

On the last date of trial, I stated that from 1944 I have been examining questioned documents. I have examined documents written in three languages, majority of them being Sinhalese. So that, I have a good experience of documents dealing with Sinhalese characters.

XXd.

(I have given evidence in cases from 1949. My

Exhibits

P.34.

Copy Evidence  
of Examiner of  
Questioned  
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8th March, 1951  
- continued.

Exhibits

P.34.

Copy Evidence  
of Examiner of  
Questioned  
Documents in  
the District  
Court of Matara.  
8th March, 1951  
- continued.

father died about two years ago. He died in April 1949. Since April 1949, I have given evidence about 8 - 10 times. I do not have the numbers of those cases now. I gave evidence in Kalutara, Panadura, Kandy Courts, all with regard to identity. I have given evidence with regard to the question of genuineness. I cannot say the number of times I have given evidence with regard to identity. I know the difference between the question of identity and the question of genuineness. I cannot say the number of times I gave evidence in a Court of Law. Probably I made a mistake when I stated that I gave evidence all with regard to the question of identity. I gave evidence some on identity and some on genuineness.

10

I can read and write Sinhalese. I do not understand what is meant by special skill. I know the letters can be written and in what way. I know the particular way in which the Sinhalese characters are written.

20

(Shown letter dated the 1st December 1949 written by the Respondent (Plaintiff) I am not very good in reading script. (The witness is unable to read the sentence after the word 'sarana'). I cannot read the second sentence in that letter. (To Court: I find it difficult to read it) It has been written in a normal way. I do not know the meaning of the word ' . With regard to reading and understanding of script, my knowledge is almost nil: (The witness is handed a copy of the "Lankadipa" a paper in Sinhalese) (The witness reads one sentence) I am unable to say some words in that paper. I do not know the meaning of what I have read. I am unable to read and understand some of the printed words in that paper.

30

With regard to the disputed handwriting in this promissory note, there is the signature in the margin of the note. In the second letter ' ' I do not know what is on the top of ' '. On the second ' ' there is an ' . My inability to read and write and understand Sinhalese characters will not detract to a very large extent from giving an opinion with regard to the genuineness of a Sinhalese writing. If that were so, it is not possible for the modern people to decipher the Egyptian languages. We have studied certain sections of the signature and once we have examined it and know the letters are written and it is not necessary to know the entire language I compared the signatures on these three documents- the

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disputed document, the motion in case No.19083 and the Affidavit filed in the present case. Some persons are capable of disguising their hands, the small letters can be made big letters. Where a person's object is to release himself from anything, it is easier to disguise his signature; he has to make it appear that it is not his signature. The position and the place at which the signature is written and the matter on which it is written also affect the signature. If it is written with a pen belonging to somebody else, it will not effect the signature of the person. I disagree with the view that an unfamiliar pen will cause a difference in the signature.

I agree to a certain extent with the view that the method of comparison by formation is an untrustworthy guide, to form an opinion with regard to the genuineness or otherwise of a writing I cannot say whether this method has been met with strong opposition in America and England. The signature of a healthy man taken on one day and his signature taken on another day must agree but the signature taken at his death bed must differ. His physical condition is a point to take into effect in considering. I have not read Lawson on "Expert Evidence". I admit there is a similarity in the formation of the letter the third letter in X1A with the in X2A and X3A. Normally letters should be forwarded in the same way, when written without thinking of disguising them. The photographs were made by someone in Matara. (I was not present when the photographs were taken. Apart from the documents I made a comparison from the photographs too. Both on the documents and on the photographs I came to this conclusion). I came to Matara and referred up the documents. I spent about half the day in examining the documents. From about 9.30 a.m. till about 12 noon I examined the documents on one day and some more time on another occasion. (I took the photographs home and examined them. I arrived at my opinion from the photographs as well as from the actual signatures appearing in the documents. I did not give instructions with regard to the taking of the photograph of the documents. I have read Lucas. I agree that every handwriting expert should be a photographer. I also have read a book by Osborne. (Passage page 247- Osborne read to witness) I do not agree with it. I say that Osborne's theory is necessary with regard to fine light. Osborne does

Exhibits

P.34.

Copy Evidence  
of Examiner of  
Questioned  
Documents in  
the District  
Court of Matara.

8th March, 1951  
- continued.

Exhibits

P.34.

Copy Evidence  
of Examiner of  
Questioned  
Documents in  
the District  
Court of Matara.  
8th March, 1951  
- continued.

not make such a distinction. I agree with the statement of Osborne at page 51. There is no scale. I agree that every document should have a scale. No scale is reproduced here. That part with regard to my basing my opinion on the photograph is vitiated to that extent. I agree with the opinion of "Bruster" that if the photograph is not properly taken, no opinion should be expressed. I have not taken a transmitted light photograph. I did not take the photographs in this case. Those photographs are not taken by transmitted light photograph. I have examined these signatures under a microscope. Transmitted light is used for a specific purpose. On all occasions it is not necessary to use transmitted light I do not agree that in every case there should be transmitted light. It is not easy to say whether these signatures were written by an ordinary pen or a fountain pen. There is a difference to a certain extent in the signature when written by an ordinary pen. It cannot easily be distinguished.

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Q. If you use an unaccustomed pen, it is bound to effect the signature in some way?

A. Not fundamentally.

There need not necessarily be a change. There is no ruling that there will be a change. I say that there are some cases in which it does not matter when a person uses an accustomed pen or an unaccustomed pen. It is not difficult to forge a signature so as to make it appear as similar and as pictorial. Dissimilarities are much more than the similarities. Dissimilarities with regard to the comparisons are exceptions and the similarities are the rule. The skill of the manipulator, the correctness of the lenses, atmospheric conditions, the period of the chemicals the accuracy of the formation of the angle at which the original was inclined to the sensitive plate are factors that would have to be taken into account. (I did not instruct the photographer with regard to these points). (Witness is referred to page 48 of Osborne - there is also a quotation of Dr. Gross)

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(To Court: Regarding these photographs, I had the originals with me. I compared the originals. I first looked at the originals and then thought that it would be advisable to take the photographs to help the Court and Counsel. Actually the photographs were not necessary for my opinion. I compared them with the originals. They

are exact reproductions. Two of them are slightly enlarged). Personally I did not think that the photographs were necessary in this case. It is not possible for certain sections of the signature to be left out or shut out when the photographs were taken. Taken from an angle, it would be different. I did not examine the negative. The disputed signature on the stamp has been re-written and re-touched. In both, the 'full-stop' has been forgotten to be inserted. It is a very clumsy forgery.

10

Re-Xd:-

My evidence is that the disputed document is an instance of forgery. It is not an instance of disguised handwriting. (Witness refers to a passage from the book "Forgery by Daniel T. Ames") (Disguise vs. Imitated writing) In a disguised writing, the writer seeks to impart an appearance as unlike as habitual writing, whereas in a imitated writing ... tries to make it as closely as possible ..... (Witness reads a passage - page 5 of Bruster). A disguised writing is an effort to conceal the normal writing with a view to subsequent denial. 'If a person wants to disguise her hand, I would expect the signature to be entirely different from her normal signature, whereas in this case there has been a similarity.' If a standard writing is smooth and strong and shows no tremors, then necessarily the presence of tremors in an alleged forgery is very suspicious itself and these ... may be strong evidence of forgery'. If a person wants to disguise the writing and if the writing slopes to his right, he would slope towards the left to make it entirely different from his or her normal signature. I say that the disputed document is not such a document - I take a strong view that it is a case of an imitated signature. I take a trained photographer with me when I go. I did not mention an opinion of the photographs. I say that the photographs are not necessary for the purpose of this case.

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(Witness reads a passage at page 105 Bruster)  
'A point that is often raised is whether it is necessary for an Examiner to have a complete knowledge of the language. For the reasons explained in this page, no such knowledge is necessary when dealing with signatures' I have a sufficient knowledge of Sinhalese to do my work and I know the Sinhalese Alphabet. Where I cannot read or write, I get help. There were no difficult words in this,

Exhibits

P.34.

Copy Evidence of Examiner of Questioned Documents in the District Court of Matara.

8th March, 1951

- continued.

Exhibits

P.34.

Copy Evidence  
of Examiner of  
Questioned  
Documents in  
the District  
Court of Matara.  
8th March, 1951  
- continued.

which I could not understand. Any person with a very little knowledge of Sinhalese can read the signature on the document. I have given opinions on handwriting. My opinions were accepted nearly in all cases.

Sgd: A.C.Gooneratne.  
D.J.

True copy of the evidence of witness  
D.Mutu Krishna recorded in D.C.Matara  
Case No.20779.

10

Sgd: Illegibly

Secretary D.C. Matara.  
12.3.56.

SEAL

R.1.

R.1. - DEED BY S.W.FERNANDO NO.1724

Deed by  
S.W.Fernando  
No.1724.

No.1724

17th January,  
1934.

TO ALL TO WHOM THESE PRESENTS SHALL COME I,  
Sellapperumage William Fernando of Kaldemulla in  
Moratuwa in the Palle Pattu of Salpiti Korale  
(hereinafter sometimes called and referred to as  
the Donor)

20

SEND GREETING

WHEREAS I the said Sellapperumage William  
Fernando am under and by virtue of Deed No.1322  
dated 16th December 1927 attested by the Notary  
Attesting these presents seized and possessed of  
or otherwise well and sufficiently entitled to in-  
ter alia the land and premises hereinafter in  
the Schedule hereto fully described.

AND WHEREAS I the said Donor am desirous of  
gifting and assigning unto my eldest daughter Sell-  
apperumage Milly Agnes Fernando also of Kaldemulla  
aforesaid (hereinafter sometimes called and re-  
ferred to as the Donee). All that the said lands  
and premises hereinafter in the Schedule hereto  
fully described.

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NOW KNOW YE AND THESE PRESENTS WITNESS that I  
the said Donor in pursuance of my said desire and  
in consideration of the premises and of my affec-  
tion which I have and bear unto my daughter the  
said Donee and for divers other good causes and  
considerations me hereunto specially moving do  
hereby give grant assign convey set over and assure

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by way of Gift absolute unto the said Donee her heirs executors administrators and assigns the said lands and premises in the said Schedule hereto fully described together with all the buildings and plantations standing thereon and all and singular the rights easements and appurtenances thereof or thereunto in anywise belonging or used or enjoyed therewith or reputed or known as part or parcel thereof and all the estate right title interest claim and demand whatsoever of me the said Donor in to upon or out of the said premises hereby assigned or any part thereof.

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TO HAVE AND TO HOLD the said premises which are of the value of Rupees Fifteen thousand (Rs.15,000/-) unto her the said Sellapperumage Milly Agnes Fernando her heirs executors administrators and assigns absolutely for ever

AND I the said Sellapperumage William Fernando do hereby for myself my heirs executors and administrators covenant and declare with and to the said Sellapperumage Millie Agnes Fernando and her aforewritten that the said premises hereby granted or intended so to be are free from all encumbrances and that I and my aforewritten shall and will always warrant and defend the same unto the said Donee and her aforewritten against all persons whomsoever

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AND THESE PRESENTS FURTHER WITNESS that Nancy Catherine Charlotte Fernando Nee Perera for and on behalf of the said Donee and the said Donee do hereby gratefully and thankfully accept the aforesaid Gift and Donation

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IN WITNESS whereof We the said Sellapperumage William Fernando, Nancy Catherine Charlotte Fernando and Sellapperumage Milly Agnes Fernando have set our respective hands hereunto and to two others of the same tenor and date as these Presents at Kaldemulla aforesaid on this Seventeenth day of January One thousand nine hundred and thirty four

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THE SCHEDULE ABOVE REFERRED TO

1. (a) All that allotment of land called Kangahamulahenawatta Kapuhenewatta and Kahatagahamullewatta, together with the buildings and plantations standing thereon situated at Diganwela Village in the Yagam Pattu Korale of Katugampola Hatpattu Kurunegala District, North Western Province bounded on the North by Paragahamulhena claimed by Dotuwa

Exhibits

R.1.

Deed by  
S.W.Fernando  
No.1724.

17th January,  
1934

- continued.



Exhibits

R.1.

Deed by  
S.W.Fernando  
No.1724.

17th January,  
1934

- continued.

Duraya and others, Gorakagahamulawatta claimed by Hapuwa and others and Kumbukugahawatta claimed by Bada and others, East by Rukattanagahamulla Kumbura Pillawa claimed by Menika and others, Rukattanagajamullawatta and Gorakagahmulawatta claimed by Agillis Appu, Talgahawatta claimed by Garu, Kahatagahamulawatta claimed by G.D.Allisa, reservation for a path Paulugahahena claimed by Setuwa Veda and Paulugahamulahena claimed by A.Baiya and others, South by Godaparagahamulahena claimed by Gabo-Singhe and others, West by a reservation along the road marked Nagalle Mukalana said to be Crown and Paragahamulahena claimed by Dotuwa Duraya and others containing in extent exclusive of the reservation for a path through the land Eighty four acres Three roods and Eight perches (A84. R3. P8).

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(b) All that allotment of land called Nagolle Mukalana together with the plantations and everything standing there situated at Diganwela Village aforesaid bounded on the North and East by a Road by T.P.335748, South by a Road and West by a Road and Bakmiruppe Village boundary containing in extent exclusive of the path Eight Acres Two Roods and Thirty seven Perches (A8. R2. P37) The said two lands adjoining each other now form one property and as from their situation could be included in one survey and from this land excluding however the defined portion called Kahatagahamulahena and Nagolle Mukalana situated at Diganwela Village aforesaid bounded on the North by a road on the East by lands of H.James Peiris, W.W. Aloysius Fernando, Juseyappuhamy and Menika and Crown Jungle on the South by Paragahawatta claimed by Natives presently by a road and on the West by a road (Weirakodiana Gankada-Ima) containing in extent Thirty two Acres one Rood and thirteen Perches (A32. R1. P13) according to Plan No.1865 dated 18th December 1933 made by A.M.Perera Special Licensed Surveyor Chilaw.

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2. All that allotment of Land called Rukattanagahawatta and Kapuhenawatta, with the plantations and everything standing thereon situated at Diganwela aforesaid bounded on the North by Lots 2 and 21, East by Lot 2 and a Road, South by T.P.335747 and Lots 2 and on the West by T.P.335748 containing in extent Two Acres Three Perches (A2. R0. P3)

3. All that allotment of field called Karandagaha Kumbura together with the plantations and everything

standing thereon situated at Diganwela Village aforesaid bounded on the North by the Bund of the Tank on the East by the ridge of the field called Dikwela on the South by the Cart Road and on the West by Land of Agilis now of the Estate of K.P.A. Annamalai Chetty herein above described containing Three and half Paras paddy sowing extent.

Exhibits

R.1.

Deed by  
S.W.Fernando  
No.1724.

17th January,  
1934

- continued

10 4. All that allotment of Land called Rukattanagahamulahena together with the plantations and everything standing thereon situated at Diganwela Village aforesaid bounded on the North by Rukattanagahamulawatta claimed by Agilis Appu East by Karandagahamula Kumbura claimed by Kakkie, South by Rukattanagahamulawatta claimed by Kakkie and on the West by Gorakagahamulawatta claimed by Agilis Appu, containing in extent Two Roods and Thirty Eight Perches (A0. R2. P38).

20 5. All that allotment of land called Gorakagahawatta together with the plantations and everything standing thereon situated at Diganwela Village aforesaid bounded on the North and West by land in TP335748 on the East by land in 335747 and on the South by the land of Kotuwa and others, containing about Half Bushels of Kurakkan Sowing extent or about One acre.  
Witnesses:-

Sgd: J.P.L.de Silva

Sgd: S. William Fernando  
(In Sinhalese)

Sgd: D.K.James.

Sgd: Nancy Katherine Perera  
(In Sinhalese)

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Sgd: Mille Agnes de Silva

No. 1724

40 I, Joseph Peter Rodrigo of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been read over and explained by me the said Notary to the said Sellapperumage William Fernando and Nancy Catherine Charlotte Fernando nee Perera both of whom have signed in Sinhalese as S.William Fernando and Nancy Catherine Perera and Sellapperumage Millie Agnes Fernando who signed as Millie Agnes de Silva all of whom are known to me in the presence of James Frederick Leapold de Silva of Moratuwa and Don Kumanerislage James of Dehiwala both of whom have signed in English the subscribing witnesses thereto both of whom are known to me the same was signed by the said executants and also by

Exhibits

R.1.

Deed by  
S.W.Fernando  
No.1724.

17th January,  
1934

- continued.

the said witnesses in my presence and in the presence of one another all being present at the same time on the Seventeenth day of January One thousand and nine hundred and thirty four at Kaldemulla.

AND I FURTHER CERTIFY AND ATTEST that the duplicate of this Instrument bears etc.,

x x x x

Date of Attestation -

17th January, 1934.

Which I Attest  
Sgd: Jos. P. Rodrigo.  
Notary Public.

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R.2.

Deed by  
S.W.Fernando  
No.1725.

17th January,  
1934.

R.2. - DEED BY S.W.FERNANDO NO.1725.

10.

No.1725

R.2.

TO ALL TO WHOM THESE PRESENTS SHALL COME I, Sellapperumage William Fernando of Kaldemulla in the Palle Pattu of Salpiti Korale (hereinafter sometimes called and referred to as the Donor)

SEND GREETING:-

WHEREAS under and by virtue of the deeds hereinafter in the Schedule hereto mentioned after each of the lands in the said Schedule fully described.

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AND WHEREAS I the said Donor am desirous of gifting and assigning unto my elder Daughter Sellapperumage Milly Agnes Fernando also of Kaldemulla aforesaid (hereinafter sometimes called and referred to as the Donee) all that and those the properties and premises in the said Schedule hereto fully described, subject to the conditions and reservations hereinafter contained

NOW KNOW YE AND THESE PRESENTS WITNESS that I, the said Donor in pursuance of my said desire and in consideration of the premises and of my affection which I have and bear unto my daughter the said Donee and for divers other good causes and considerations me hereunto specially moving do hereby give grant assign convey set over and assure by way of Gift unto the said Donee her heirs executors administrators and assigns the said lands and premises in the said Schedule hereto fully described, together with all the buildings and plantations standing thereon and all and singular the

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rights easements and appurtenances thereof or thereunto in anywise belonging or used or enjoyed therewith or reputed or known as part or parcel thereof and all the estate right title interest claim and demand whatsoever of me the said Donor in to upon or out of the said premises hereby assigned or any part thereof

Exhibits

R.2.

Deed by  
S.W.Fernando  
No.1275.

17th January,  
1934

- continued.

10 TO HAVE AND TO HOLD the said premises which are of the value of Rupees Twelve thousand five hundred (Rs.12,500-00) unto her the said Sellapperumage Milly Agnes Fernando the Donee her heirs, executors, administrators and assigns for ever, subject however to the following reservations and conditions viz:-

1. That I the said Sellapperumage William Fernando the Donor shall have the right which is hereby expressly reserved to me of holding and possessing the said premises and every part thereof and of enjoying the rents profits and income of the said premises and every part thereof during my lifetime

2. That after the death of me the said Donor the said property and premises shall devolve on my daughter the said Donee subject to the condition that she shall not sell mortgage alienate or otherwise encumber in any manner whatsoever the said property and that she shall have the right to enjoy and possess and derive the income thereof during her lifetime and that after her death the said property shall devolve on her children share and share alike but the right is hereby expressly reserved to my said daughter Sellapperumage Milly Agnes Fernando to devise the said property to any one or more of her children at her discretion subject to any condition she may deem necessary.

3. And that in the event of my said daughter Sellapperumage Milly Agnes Fernando departing this life without leaving any issue the said property and premises hereby granted shall revert to me the said Donor or to my lawful heirs.

AND I the said Sellapperumage William Fernando do hereby for myself my heirs executors and administrators covenant and declare with and to the said Sellapperumage Milly Agnes Fernando and her aforewritten that the said premises hereby granted or intended so to be are free from all encumbrances and that I and my aforewritten shall and will always warrant and defend the same unto the said Donee and her aforewritten against all persons whomsoever.

Exhibits

R.2.

Deed by  
S.W.Fernando  
No.1725.

17th January,  
1934

- continued.

AND THESE PRESENTS FURTHER WITNESS THAT Nancy Catherine Charlotte Fernando nee Perera for and on behalf of the said Donee and the said Donee do hereby gratefully and thankfully accept the aforesaid gift and donation subject to the conditions hereinbefore contained

IN WITNESS whereof We the said Sellapperumage William Fernando and Nancy Catherine Charlotte Fernando nee Perera and Sellapperumage Milly Agnes Fernando have set our respective hands hereunto and to two others of the same tenor and date as these presents at Kaldemulla aforesaid this Seventeenth day of January One thousand nine hundred and thirty four

10

THE SCHEDULE ABOVE REFERRED TO

1. All that portion of land called Elabodawatta situated at Kaldemulla in the Palle Pattu of Sali-piti Korale in the District of Colombo, Western Province, together with everything standing thereon bounded on the North by the garden belonging to the heirs of the late Manuel Fernando, on the East by the Road on the South by the garden of S.William Fernando and on the West by Luna Ela containing in extent One rood and Thirty two perches (AO,R1.P32) as per Plan No.137 dated 12th January 1918 made by Hubert F.Senaratne Surveyor, held and possessed by me the said Donor under and by virtue of Deed No. 7173 dated 17th January 1918 attested by S.D.M. Seneviratne Notary Public.

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2. All that defined portion of land being a portion of the three contiguous portions of land called ELABODAWATTA, KAHATAGAHAWATTA alias NUGAGAHAWATTA and MARAKKALAGE NUGAGAHAWATTA situated at Kaldemulla aforesaid together with everything standing thereon bounded on the North by the garden of S.William Fernando on the East by Gansabawa Road on the South by the garden of Alice Caroline de Mel and on the West by Luna Ela containing in extent Three roods and thirty one perches (AO. R3. P31) according to Plan No.528 dated 17th June 1925 made by A.H.Fernando Surveyor held and possessed by me the said Donor under and by virtue of Deed No.11120 dated 18th June 1925 attested by S.D.M.Seneviratne Notary Public.

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3. All that Lot No.1 out of the Northern defined half share of the land called ELABODAWATTE situated at Kaldemulla aforesaid together with everything standing thereon bounded on the North by the property belonging to the estate of Merennage Abraham

Fernando On the East by the Kaldemulla Gansabawa Road on the South by a portion of the same land now belonging to James Perera and on the West by Luna Ela containing in extent One rood and thirty seven and a half square perches (AO. Rl. P37 $\frac{1}{2}$ ) according to Plan No.292 dated 25th March 1916 made by B.A.Fernando, Licensed Surveyor held under Deed No.333 dated 5th April 1916 attested by W.A.de Mel Notary Public.

Exhibits

R.2.

Deed by  
S.W.Fernando  
No.1725.  
17th January,  
1934  
- continued.

10 4. All that defined portion of land being a portion of the two contiguous portions of the land called ELABODAWATTA together with everything standing thereon situated at Kaldemulla aforesaid bounded on the North by the land belonging to M.Orlina Fernando and S.William Fernando, on the East by Gansabawa Road, on the South by the land belonging to S.William Fernando, M.Caroline Fernando and others and on the West by land belonging to M. Carolis Fernando and others containing in extent  
20 One rood and 7, 25/100 Perches (AO. Rl. P7 25/100) according to Plan No.916 dated 19th June 1928 made by A.H.Fernando Surveyor held under Deed No.12615 dated 23rd June 1928 attested by S.D.M.Seneviratne Notary Public. The said four allotments of lands adjoining each other now form one property and as from their situation could be included in one Survey.

30 5. All that defined portion of land being a portion of the land called a portion of ELABODAWATTA, together with everything standing thereon situated at Kaldemulla aforesaid, bounded on the North by the garden of Muthuthanthri Bastiange Davith Fernando, on the East by the Cinnamon Garden belonging to Hettiakandage Francis Fernando on the South by the garden of Weerahenedige Abraham Fernando and on the West by the Cart Road, containing in extent One rood and four and a quarter perches (AO.Rl.P4 1/4) held under Deed No.7172 dated 17th  
40 January 1918 attested by S.D.M.Seneviratne Notary Public.

Sgd: S.William Fernando  
(In Sinhalese)

Sgd: Nancy Catherine Perera  
(In Sinhalese)

Sgd: Millie Agnes de Silva.

Sgd: J.P. Rodrigo  
N.P.

6. All those undivided 7/20 shares of a portion

Exhibits

R.2.

Deed by  
S.W.Fernando  
No.1725.  
17th January,  
1934  
- continued.

of the land called GORAKAGAHAWATTA and of everything standing thereon situated at Kaldemulla aforesaid bounded on the North by the garden of Mahamarakala Kurukulasuriya Mahapatabendige Jeronis Perera, on the East by the garden of Muthuthanthri Bastiange Juwan Fernando, on the South by Katupelellegajawatta and on the West by Luna Ela, containing land sufficient to plant about One hundred and twenty five (125) coconut plants, held and possessed by me the said Donor under Deed No. 18574 dated 4th June 1918 attested by D.F.W.Karunaratna Notary Public.

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7. All that land called KATUPELELLEWATTA together with everything standing thereon situated at Kaldemulla aforesaid bounded on the North by Kosagahawatta belonging to Malimige people on the East by Madangahawatta on the South by Gorakagahawatta belonging to Sellapperumage people and on the West by Luna Ela containing land sufficient to plant One hundred and twelve (112) coconut plants together with a right of way over Madangahawatta the boundary on the East to pass and repass to and from this land held under Deed No.8830 dated 2nd November 1920 attested by S.D.M.Seneviratne Notary Public.

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8. All those 8/15 shares from and out of all that land called a portion of KATUPELELLAGAHAWATTA and of everything standing thereon situated at Kaldemulla aforesaid bounded on the North by Gorakagahawatta belonging to Sellapperumage Thepanis Fernando on the East by the ditch over which water flows, South by Katupelellegahawatta belonging to Ungamandadige Endoris Fernando and on the West by the garden of Kirikankanamge Bastian Fernando containing in extent Twenty six perches (AO.RO.P26)

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9. All that defined portion to the South of the land comprising of several portions of KATUPELELLAGAHAWATTA and the adjoining Owita land together with everything standing thereon situated at Kaldemulla aforesaid bounded on the North by lands belonging to W.Bastian Fernando and others and the other half share of the same land on the East by the garden of Christina Aponsu South by the garden of S.Samuel Fernando and on the West by Luna Ela containing in extent Twenty eight perches (AO.RO.P28).

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10. All that portion of the Owita lying by KATUPELELLAGAHAWATTA together with everything standing thereon situated at Kaldemulla aforesaid bounded

on the North by the garden of Madappuli Aratchige Juwanis Fernando East by the garden of Warusa Hen-nedige Isabella Fernando, and others, and the land of Goniamalimige Christina Aponsu on the South by the land of Goniamalimige Christina Aponsu and on the West by Luna Ela containing in extent about twelve perches (AO.RO.P12) the said three portions of lands have been held and possessed by me the said Donor under and by virtue of Deed No.8829 dated 2nd November 1920 attested by S.D.S.Seneviratne Notary Public.

Exhibits

R.2.

Deed by  
S.W.Fernando  
No.1725.17th January,  
1934

- continued.

10

11. All that Southern portion of the portion of the land called DOMBAGAHAWATTA together with the buildings and plantations standing thereon situated at Angulana in the Palle Pattu of Salpiti Korale aforesaid bounded on the North by the portion allotted to Cornelis Aponsu on the East by Luna Ela on the South by the garden of Ungamandadige Silvestry Fernando and on the West by Mandan-gahawatta containing land sufficient to plant about Six (6) coconut plants.

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12. Another portion of the land called DOMBAGA-HAWATTA together with the buildings and plantations standing thereon situated at Angulana aforesaid bounded on the North by a portion of land inherited by Cornelis Aponsu on the East by Lune Ela on the South by a portion of this land inherited by Siripina Aponsu and on the West by Madangahawatta, containing land sufficient to plant about Forty three (43) coconut plants the said two portions of lands have been held and possessed by the said Donor under and by virtue of Deed No.8399 dated 20th February 1920 attested by S.D.S.Seneviratne Notary Public

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13. All that undivided one-eighth share out of portion of KATUPEIALLAGAHAWATTA and the adjoining Owita and of everything standing thereon situated at Kaldemulla aforesaid bounded on the North by the Owita belonging to Ungamandadige Abraham Fernando and the land belonging to Kirikankanange Carolis Fernando on the East by the land belonging to Ungamandadige Abraham Fernando, South by the Owita land belonging to Bastian Appu and on the West by Luna Ela containing in extent One rood and eighteen and fifty one upon a hundred square perches (AO.R1.P18 51/100)

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Witnesses:-



Exhibits

R.2.

Deed by  
S.W.Fernando  
No.1725.

17th January,  
1934

- continued.

Signed and Delivered in our  
presence and we do hereby  
declare that we are well  
acquainted with the execu-  
tants and know their proper  
names, occupations and resi-  
dences

Sgd: J.F.L.de Silva

Sgd: D.K. James

Sgd:  
S.William Fernando  
(In Sinhalese)

Sgd:  
Nancy Catherine  
Perera  
(In Sinhalese)

Sgd:  
Millie Agnes de  
Silva.

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Sgd: J.P.Rodrigo  
N.P.

I, Joseph Peter Rodrigo of Colombo in the  
Island of Ceylon Notary Public do hereby certify  
and attest that the foregoing Instrument having  
been duly read over and explained by me the said  
Notary to the said Sellapperumage William Fernando  
and Nancy Catherine Charlotte Fernando nee Perera  
both of whom have signed in Sinhalese as "S.  
William Fernando" and "Nancy Catherine Perera" and  
Sellapperumage Millie Agnes Fernando who signed in  
English as "Millie Agnes de Silva" all of whom are  
known to me in the presence of James Frederick  
Leopold de Silva of Moratuwa and Don Kumanerislage  
James of Dehiwala both of whom have signed in  
English, the subscribing witnesses hereto both of  
whom are known to me, the same was signed by the  
said Executants and also by the said witnesses in  
my presence and in the presence of one another all  
being present at the same time at Kaldemulla afore-  
said on this Seventeenth day of January One thous-  
and nine hundred and thirty four

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And I further certify and attest that in the  
Original etc.,

x x x x

Date of Attestation -

17th January, 1934.

Which I Attest,

Sgd: J.P.Rodrigo  
Notary Public.

SEAL.

R.3. - DEED BY S.W.FERNANDO NO.1757R.3.Exhibits

R.3.

In terms of Section 44 of Ordinance No.22 of 1909 I certify that a sum of Rs.128/- was paid by S.W.Fernando of Angulana for deficiency of stamp duty Rs.64/- and penalty Rs.64/- leviabale in respect of this deed and was credited to revenue on 22 June 1935.

Deed of  
S.W.Fernando  
No.1757.

2nd October,  
1934.

10 Stamp Office )  
Colombo, ) Sgd: Illegibly  
June 26, 1935) For Commissioner of Stamps.

No.1757

TO ALL TO WHOM THESE PRESENTS SHALL COME I, Sellapperumage William Fernando of Kaldemulla in Moratuwa in the Palle Pattu of Salpiti Korale (hereinafter sometimes called and referred to as the said Donor)

SEND GREETING -

20 WHEREAS I the said Sellapperumage William Fernando under and by virtue of Deed No.1406 dated 21st August 1928, attested by the Notary attesting these Presents seized and possessed of or otherwise well and sufficiently entitled to inter alia the land and premises hereinafter in the Schedule hereto fully described

30 AND WHEREAS I the said Donor am desirous of Gifting and assigning unto my younger daughter Sellapperumage Evelyn Letitia Fernando also of Kaldemulla aforesaid (hereinafter sometimes called and referred to as the Donee) all that the said land and premises hereinafter in the Schedule hereto fully described, subject to the conditions hereinafter contained

40 NOW KNOW YE AND THESE PRESENTS that I the said Donor in pursuance of my said desire and in consideration of the premises and of my affection which I have and bear unto my daughter the said Donee and for divers other good causes and considerations me hereunto specially moving do hereby give grant assign convey set over and assure by way of Gift absolute unto the said Donee her heirs executors administrators and assigns the said land and premises in the Schedule hereto fully described together with all the buildings and plantations standing thereon, and all and singular the rights easements and appurtenances thereof or thereunto or in anywise belonging used or enjoyed therewith or

Exhibits

R.3.

Deed by  
S.W.Fernando  
No.1757.

2nd October,  
1934

- continued

reputed or known as part and parcel thereof and all the estate right title interest claim and demand whatsoever of me the said Donor into upon or of the said premises hereby assigned or any part thereof

TO HAVE AND TO HOLD the said premises which are of the value of Rupees Six thousand (Rs.6,000/-) unto her the said Sellapperumage Evelyn Letitia Fernando her heirs executors administrators and assigns absolutely for ever subject however to the following conditions to wit:-

10

That Nancy Catherine Charlotte Fernando nee Perera of Kaldemulla aforesaid my wife shall have the right which is hereby expressly reserved to her of holding and possessing the said premises and every part thereof and of enjoying the rents profits and income of the said premises and every part thereof during her lifetime.

AND I the said Sellapperumage William Fernando do hereby for myself my heirs executors and administrators covenant and declare with and to the said Sellapperumage Evelyn Letitia Fernando and her aforewritten that the said premises hereby granted or intended so to be free from all encumbrances and that I and my aforewritten shall and will always warrant and defend the same unto the said Donee and her aforewritten against all persons whomsoever.

20

AND THESE PRESENTS FURTHER WITNESS that Nancy Catherine Charlotte Fernando nee Perera for and on behalf of the said Donee do hereby gratefully and thankfully accept the aforesaid Gift and donation.

30

IN WITNESS whereof We the said Sellapperumage William Fernando nee Perera have set our respective hands and to two others of the same tenor and date as These Presents at Kaldemulla aforesaid on this Second day of October One thousand nine hundred and thirty four

THE SCHEDULE ABOVE REFERRED TO

All those Ten Allotments of land called Rawapitiyahena, Meegahamulahena, Pinnagolleyaya, Pinnegollehena, Bogahamulahena, Kongahahena, Ketakalagahamulahena, Hatarapanguwahena alias Galagawahena, Batuwa Dalpota Pillewa and Kumbukgahamulahena together with the buildings plantations cattle, furniture, implements and tools thereon situated at Udubaddawa and Wilapola in

40

Katugampola Hatpattuwa of Katugampola Korale in the District of Krunegala North Western Province bounded on the North by the field called Wilapola Wela East by Badawetiya and Wilapola South by High Road leading to Kurunegala and on the West by the garden of the heirs of Karanis Appu and Manikrala containing in extent within the said boundary, Forty one acres and ten perches (A41. RO. P10) according to Plan No.922 dated 12th September 1918 and authenticated by D.Francis Paul Licensed Surveyor excluding therefrom an extent of Three Roods and sixteen perches acquired by the Crown.

Exhibits

R.3.

Deed by  
S.W.Fernando  
No.1757.

2nd October,  
1934

- continued.

10

Witnesses:-

Sgd: F.J.L.de Silva

Sgd: S.William Fernando  
(In Sinhalese)

Sgd: Illegibly

Sgd: Nancy Catherine  
Perera  
(In Sinhalese)

20

Sgd: Jos.P.Rodrigo,  
N.P.

30

I, Joseph Peter Rodrigo of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the said Sellapperumage William Fernando and Nancy Catherine Charlotte Fernando nee Perera both of whom have signed in Sinhalese Characters and both of whom are known to me in the presence of James Frederick Leopold de Silva of Bambalapitiya in Colombo and Gardiawasan Seekku Hewage Peter Gerald Dias of Kaldemulla both of whom have signed in English, the subscribing witnesses thereto both of whom are known to me and the same was signed by the said executant and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Kaldemulla on this Second day of October One thousand nine hundred and thirty four

40

AND I FURTHER CERTIFY AND ATTEST that the  
Original

x                    x                    x                    x

Date of Attestation -

2nd October, 1934.

Which I Attest

Sgd: Jos. P. Rodrigo  
Notary Public.

SEAL.

ExhibitsR.4. - DEED BY S.W.FERNANDO NO.1758

R.4.

No.1758

R.4.

Deed by  
S.W.Fernando  
No.1758.  
2nd October,  
1934.

TO ALL TO WHOM THESE PRESENTS SHALL COME I,  
Sellapperumage William Fernando in Moratuwa in  
the Palle Pattu of Salpiti Korale (hereinafter  
sometimes called and referred to as the Donor)

SEND GREETING -

WHEREAS under and by virtue of the Deeds  
hereinafter in the Schedule hereto mentioned after  
each of the lands in the said Schedule fully des- 10  
cribed.

AND WHEREAS I the said Donor am desirous of  
gifting and assigning unto my younger daughter Sel-  
lapperumage Evelyn Letitia Fernando also of Kalde-  
mulla aforesaid (hereinafter sometimes called and  
referred to as the Donee) all that and those the  
properties and premises in the Schedule hereto  
fully described subject to the covenants and res-  
ervations hereinafter contained

NOW KNOW YE AND THESE PRESENTS WITNESS that 20  
I the said Donor in pursuance of my said desire  
and in consideration of the premises and of any  
affection which I have and bear unto my daughter  
the said Donee and for divers other good causes  
and considerations me hereunto specially moving do  
hereby give grant assign convey set over and as-  
sure by way of gift unto the said Donee her heirs  
executors administrators and assigns the said  
lands and premises in the said Schedule hereto  
fully described together with the buildings and 30  
plantations standing thereon and all and singular  
the rights easements and appurtenances thereof or  
thereunto in anywise belonging or used or enjoyed  
therewith or reputed or known as part or parcel  
thereof and all the estate right title interest  
claimed demand whatsoever of me the said Donor in  
to upon or out of the said premises hereby assigned  
or any part thereof

TO HAVE AND TO HOLD THE said premises which 40  
are of the value of Rupees Seven thousand  
(Rs.7,000/-) unto her the said Sellapperumage Eve-  
lyn Letitia Fernando the Donee her heirs executors  
administrators and assigns for ever, subject how-  
ever to the following reservations and conditions  
viz:-

1. THAT Nancy Catherine Charlotte Fernando nee

Perera of Kaldemulla aforesaid my lawful wife shall have the right which is hereby expressly reserved to her of holding and possessing the said premises and every part thereof and of enjoying the rents profits and income of the said premises and every part thereof during her lifetime.

Exhibits

R.4.

Deed by S.W.Fernando No.1758.

2nd October, 1934,  
- continued.

10

2. THAT after the death of the said Nancy Catherine Charlotte Fernando nee Perera the said property and premises shall devolve on my daughter the said Donee subject to the conditions that she shall not sell mortgage alienate or otherwise encumber in any manner whatsoever the said property and that she shall have the right to enjoy and possess and derive the income thereof during her lifetime and that after her death the said property shall devolve on her children share and share alike but the right is hereby expressly reserved to my said daughter Evelyn Letitia Fernando to devise the said property to any one or more of her children at her discretion subject to any conditions she may deem necessary.

20

3. AND that in the event of my said daughter Evelyn Letitia Fernando departing this life without leaving any issue the said property and premises hereby granted shall revert to me the said Donor or to any lawful heirs.

30

AND I the said Sellapperumage William Fernando do hereby for myself my heirs executors and administrators covenant and declare with and to the said Donee and her aforewritten that the said premises hereby granted or intended so to be free from all encumbrances and that I and my aforewritten shall and will always warrant and defend the same unto the said Donee and her aforewritten against all persons whomsoever

40

AND THESE FURTHER WITNESS that Nancy Catherine Charlotte Fernando nee Perera for and on behalf of the said Donee doth hereby gratefully and thankfully accept the aforesaid Gift and donation subject to the conditions and reservations hereinbefore made.

IN WITNESS whereof We the said Sellapperumage William Fernando and Nancy Catherine Charlotte Fernando nee Perera have set our respective hands hereunto and to two others of the same tenor and date as these Presents at Kaldemulla aforesaid on this Second day of October One thousand nine hundred and thirty four

ExhibitsTHE SCHEDULE ABOVE REFERRED TO

R.4.  
Deed by  
S.W.Fernando  
No.1758.  
2nd October,  
1934  
- continued.

1. All that portion of land called Bahinatote Uswatte together with the buildings and plantations standing thereon situated at Kaldemulla in the Palle Pattu of Salpiti Korale in the District of Colombo Western Province, bounded on the North by the garden belonging to J.Peter Perera on the East by garden of J.Peter Perera on the South by the garden of A.Juwanis de Mel and on the West by the garden of W.Andris de Mel, containing in extent One rood and thirteen and seventy five upon a hundred perches (AO. Rl. P13 75/100) held and possessed by me the said Donor under and by virtue of Deed No.7385 dated 20th June 1918 attested by S.D.M. Seneviratne Notary Public.

10

2. All those defined two third shares of the land called Madangahawatta together with the buildings and plantations standing thereon situated at Kaldemulla aforesaid bounded on the North by the garden belonging to Warnakuwattewaduge Hendrick Fernando and on the East by the land belonging to W.Hendrick Fernando and Hettiakandage Angela Fernando on the South by the other one third share of this land and by the land of Merennage Abraham Fernando and on the West by Owita land of Vidanelage Andris de Mel and the garden of S.H.Fernando containing in extent One Rood and thirty eight and Sixty upon a hundred perches (AO. Rl. 38 66/100) held and possessed under Deed No.7975 dated 14th July 1919 attested by S.D.M. Seneviratna Notary Public.

20

30

3. All that land comprising of the Eastern portion of a portion of Kurunduwatta the two portions of Kurunduwatta the Eastern one third of Kurunduwatta and the Northern half share marked A out of the two portions of Kurunduwatta and Dimbulgahawatta now forming one property together with the buildings and plantations standing thereon but excluding therefrom the building bearing Assessment No.398 Iaxapathiya together with an acre of land adjoining the said building situated at Iaxapathiya in Moratuwa in the Palle Pattu of Salpiti Korale aforesaid, bounded on the North by Angulana Road on the East by the Cinnamon gardens belonging to the Estate of the late C.H.de Soysa by lands belonging to V.Juwanis de Mel and Christian de Mel, by a ditch and by the garden of Uththamawaduge Cornelis Silva on the South by the garden of Hawari Radage Thidoris Fernando and on the West by the garden of Merennage Louis Fernando containing in extent Three acres one rood and thirty perches (A3. Rl. P30).

40

50

10 4. All that defined Southern Three fourths share of the land called Kurunduwatta together with the buildings and plantations standing thereon situated at Laxapathiya aforesaid bounded on the North by a portion of this land belonging to David Fernando on the East by the garden of Mr. Charles Henry de Soysa on the South by the remaining portions of this land six feet in breadth and on the West by the garden of Peduru Fernando containing in extent One rood and six and seventy seven upon a hundred perches (A.O. Rl. P6 7.7/100) which said two portions of lands marked Nos.3 and 4 are held and possessed under Deed No.9725 dated 21st August 1922 attested by S.D.M.Seneviratne Notary Public.

20 5. All that portion of land called Kurunduwatta together with the trees and buildings standing thereon situated at Laxapathiya aforesaid bounded on the North by the property of S.William Fernando on the East by the Water course separating the property of S. Walter de Soysa on the South by the property of S.William Fernando and on the West by the property of S.William Fernando containing in extent One rood and sixteen perches (A.O. Rl. P16) held and possessed under Deed No.1834 dated 20th May 1925 attested by C.S.A.Perera Notary Public.

30 6. All that undivided half share of the Southern one fourth share of a portion of Kurunduwatta and of the buildings and plantations standing thereon situated at Laxapathiya aforesaid bounded on the North by the remaining three fourths share of this Kurunduwatta belonging to Vidanelage Christian de Mel and others on the East by the Boundary Western opening of the ditch belonging to Joronis de Soysa Dissanayake Gate Mudaliyar, on the South by the strip of land six feet in breadth reserved for a roadway and on the West by another portion of this Kurunduwatta belonging to Merennage Cornelis Fernando and others, containing in extent about One rood (A.O.Rl.PO)

40 7. All that undivided half share of a portion Divulgahawatta and of the buildings and plantations standing thereon situated at Laxapathiya aforesaid bounded on the North by the garden of Luwis Perera on the East by the stream on the South by the garden that belong to Juwan Fernando and now belonging to Malimige Andris Fernando and on the West by the garden which belong to Simon Fernando wife of Andris Fernando and now belonging to Daniel Fernando containing land sufficient to plant about  
50 Eight coconut plants which said two portions of

Exhibits

E.4.

Deed by  
S.W.Fernando  
No.1758.2nd October,  
1934

- continued.





10 and Nancy Catherine Charlotte Fernando nee Perera both of whom have signed in Sinhalese characters and both of whom are known to me in the presence of James Frederick Leopold de Silva of Bambalapi-tiya in Colombo and Gardiya Wasan Seekku Hewage Peter Gerald Dias of Kaldemulla both of whom have signed in English the subscribing witnesses there- to both of whom are known to me and the same was signed by the said executants and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Kaldemulla on this second day of October One thou- sand nine hundred and thirty four.

AND I FURTHER CERTIFY AND ATTEST that in the Original etc.,

x	x	x	x
Date of Attestation -		Which I Attest	
2nd October, 1934		Sgd: Jos. P. Rodrigo	
	SEAL	Notary Public.	

20 In terms of Section 4 of Ordinance No.22 of 1909 I certify that a sum of Rs.154/- was paid by J.P.Rodrigo Proctor of 253 Hultsdorf for deficiency of stamp duty Rs.134/- and penalty Rs.20/- leviable in receipt of the deed and was credited to revenue on 11.5.35, 5.6.35 and 5.7.35.

Stamp Office  
Colombo -  
July 8th, 1935.

Sgd: Illegibly  
Commissioner of Stamps.

R.5. - PLAINT IN DIVORCE CASE NO.820/D

IN THE DISTRICT COURT OF COLOMBO

30 Colombapatabendige Nancy Catherine Charlotte Fernando nee Perera of Koralawella, Moratuwa

Plaintiff

Vs.

Sellapperumage William Fernando of "Nancy Villa" in Kaldemulla, Moratuwa and of Nawagala Estate Yatawatta Matale

Defendant

No.820  
Nature: Divorce  
Class: I.  
Procedure: Regular.

Exhibits

E.4.

Deed by  
S.W.Fernando  
No.1758.

2nd October,  
1934

- continued.

R.5.

R.5.

Plaint in  
Divorce Case  
No.820/D.

23rd November,  
1943.

Exhibits

R.5.

Plaint in  
Divorce Case  
No.820/D.

23rd November,  
1943

- continued.

On this 23rd day of November, 1943.

The Plaintiff of the Plaintiff above-named appearing by N. John Stephen Cooray her Proctor states as follows:-

1. The Plaintiff resides at Korawalawella Moratuwa within the jurisdiction of this Court and the cause of action hereinafter set forth arose within the said jurisdiction.

2. The Plaintiff and the Defendant are wife and husband and were married at Holy Emmanuel Church Moratuwa, on the 8th day of February, 1917. A certified copy of the marriage registration certificate marked "A" is filed herewith and pleaded as part and parcel of this plaint. 10

3. There is one child of the marriage, Evelyn Letitia Peiris nee Fernando who is now married and settled in life.

4. By a Deed of Separation No.591 dated 16th and 18th August 1941 attested by T. Terrence Fernando Notary Public the parties to this action mutually agreed to live separate a mensa et thoro and since the date of the said deed the parties to this action have lived apart from one another. 20

5. Subsequent to the said Deed of Separation the Defendant has committed adultery with a woman named Goniamalimage Maria Aponso and is now living in adultery with her at Nawagala Estate in Yatawatta Matale and at time at "Nanci Villa" Kalde-mulla Moratuwa.

6. A cause of action has thus accrued to the Plaintiff to sue the Defendant for a decree of divorce a Vinculo Matrimonii on the ground of the said adultery. 30

7. The Plaintiff also claims alimony from the Defendant both pendente lite and permanent. The Defendant is in receipt of a monthly income of Rs.3,000/- and the Plaintiff claim a sum of Rupees Six hundred (Rs.600/-) per mensem as permanent alimony.

8. The Plaintiff has entrusted for safe keeping with the Defendant certain articles of jewellery and the Plaintiff reserves to herself the right to sue for their recovery in a separate action. 40

WHEREFORE THE PLAINTIFF PRAYS, that the Court be pleased :-

- (a) to enter judgment dissolving the marriage of the Plaintiff and the Defendant on the ground of the latter's adultery.
- (b) to grant the Plaintiff permanent alimony in the sum of Rs.600/- a month.
- (c) to grant the Plaintiff costs of suit and such other and further relief in the premises as to this Court shall seem meet.

Exhibits

R.5.

Plaint in  
Divorce Case  
No.820/D.

23rd November,  
1943

- continued.

Sgd: N.J.S.Cooray  
Proctor for Plaintiff.

10

Settled by -  
Sgd: Kingsley Herat  
Advocate.

THE DOCUMENTS FILED WITH THE PLAINT.

- 1. Marriage Certificate dated 10th November 1943.

Sgd: N.J.S.Cooray  
Proctor for Plaintiff.

R.6. - ANSWER IN DIVORCE CASE NO.820/D.

R.6.

IN THE DISTRICT COURT OF COLOMBO

No.820/D.

R.6.

Answer in  
Divorce Case  
No.820/D.

20

Colombapatabendige Nancy Catherine  
Charlotte Fernando nee Perera of  
Koralawella Moratuwa

Plaintiff

18th February,  
1944.

Vs.

Sellapperumage William Fernando of  
Nanci Villa, Kaldemulla, Moratuwa

Defendant

On this 18th day of February, 1944.

30

The answer of the Defendant above-named appearing by Merrill Wilson Pereira, Lionel Donald Stewart Gunasekera, Corbet Edward Jayewardena and Edgar Dennis Samerawickreme practising in partnership under the name style and firm of "Merrill Pereira & Gunasekera" and their assistant Alfred Lionel Gunaskera his Proctors state as follows:-

- 1. The Defendant admits averments in paragraphs 1, 2 and 3 of the Plaint but denies the allegations that any cause of action whatever has accrued to the Plaintiff to sue the Defendant for a divorce a vinculo matrimonii on the ground of adultery or any other ground whatsoever.

Exhibits

R.6.

Answer in  
Divorce Case  
No.820/D.

18th February,  
1944.

- continued.

2. The Defendant denies all and singular the allegations in paragraphs 5, 6 and 8 of the plaint.

3. Answering paragraph 4 of the Plaint this Defendant admits the averments therein contained and states that under and by virtue of the deed of separation therein referred to, the Plaintiff and the Defendant inter alia further agreed:-

(a) that the Defendant should pay to the Plaintiff a sum of Rs.500/- at the execution of the said deed and hand over a sum of Rs.1,500/- immediately after the execution of the said deed. 10

These two sums aggregating to Rs.2,000/- the Defendant paid to the Plaintiff and the Plaintiff acknowledged receipt of the same.

(b) that the said sum of Rs.1,500/- be paid back by the Plaintiff to the Defendant in the event of the Plaintiff molesting or obstructing the Defendant in any way after the execution of the said deed.

(c) that the Defendant do pay to the Plaintiff a monthly allowance of Rs.25/- on or before the 16th day of each and every succeeding month commencing from the 16th day of September 1941 during the terms of the Defendant's natural life for and towards the better support of the Plaintiff but the payment of the said monthly sum to cease should the marriage between the Plaintiff and the Defendant be at any time dissolved by a Court of competent jurisdiction 20

This sum of Rs.25/- has been and is being regularly paid to the Plaintiff by the Defendant above-named. 30

(d) that the Plaintiff shall not at any time commence or prosecute any action or other proceedings for compelling the Defendant to live with the Plaintiff or to allow her any support maintenance or alimony excepting the said sum of Rs.25/- allowed for her maintenance.

(e) that the Plaintiff shall not molest the Defendant in any manner at any time after the execution of the said deed 40

4. Answering paragraph 7 of the Plaint the Defendant whilst denying the Plaintiff's right to claim and the Defendant liability to pay any sum as alimony, whether pendente lite or permanent, states that the Plaintiff's assessment of the Defendant's income to gross exaggeration and puts the Plaintiff to the proof thereof.

5. Further answering the Defendant states that by Deeds of Gift Nos. 1757, 1758 of 2nd October, 1934 he gifted to his daughter referred to in paragraph 3 of the Plaint several properties presently for the value of Rs.84,000/- subject to the rights of the Plaintiff to enjoy the rents profits and income therefrom during her lifetime.

Exhibits

R.6.

Answer in  
Divorce Case  
No.820/D.

18th February,  
1944

- continued.

10 6. The Defendant states from and after February 1940 that the Plaintiff has been and is in possession of the said properties enjoying the income therefrom and is in receipt of an income of about Rs.325/- a month from the properties referred to in the preceeding paragraph which sum is ample and sufficient for the Plaintiff's maintenance and upkeep.

20 7. The Defendant further states that prior to the execution of the deed of separation he had bought in the name of the Plaintiff properties of the value of Rs.6,100/- which properties the Plaintiff has since February 1940 disposed of by sale and is having in her hands the proceeds thereof or is appropriating the income from the proceeds thereof. The Defendant is unable to state the annual or monthly income from the proceeds of the sale of the said properties.

30 8. Further answering the Defendant states that shortly prior to the execution of the said deed of separation in circumstances not necessary here to aver the Plaintiff during the absence of the Defendant left his house with all the furniture and jewellery belonging to the Defendant that she was able to lay her hands of the aggregate value of Rs.6,000/- and such furniture and jewellery the Defendant did not claim from the Plaintiff and still remain in her possession.

9. The Defendant further states that in view of the averments above contained the Plaintiff is not in law entitled to claim any alimony from the Defendant.

0 10. Still further answering the Plaint the Defendant states that this action is a frivolous and vexatious one calculated to molest the Plaintiff, instituted in breach of the covenants of the said deed of separation and a cause of action has accrued to the Defendant to claim from the Plaintiff the payment of the sum of Rs.1,500/- given to her immediately after the execution of the said deed of separation.

Exhibits

R.6.

Answer in  
Divorce Case  
No.820/D.

18th February,  
1944  
- continued.

WHEREFORE THE DEFENDANT PRAYS:-

- (1) That the Plaintiff's action for divorce a vinculo matrimonii be dismissed.
- (2) That order be made directing Plaintiff to pay the Defendant a sum of Rs.1,500/-
- (3) For costs, and
- (4) For such other and further relief as to this Court shall seem meet.

Sgd: Merrill Pereira & Gunasekera

Sgd: C.E. Jayawardena  
Partner

10

Proctor for Defendant

Settled by -

Sgd: M.T.de S.Amarasekera, K.C.,

Sgd: H.W. Jayawardena, Advocate.

20

R.7.

Decree in  
Divorce Case  
No.820/D.

14th August,  
1944.

R.7. - DECREE IN DIVORCE CASE NO.820/D

R.7.

IN THE DISTRICT COURT OF COLOMBO

No.820/D

Colombapatabendige Nancy Catherine  
Charlotte Fernando nee Perera of  
Koralawella, Moratuwa

Plaintiff

against

Sellapperumage William Fernando of  
"Nanci Villa" in Kaldemulla, Moratuwa  
and of Nawagala Estate, Yatawatta,  
Matale

Defendant

30

This action coming on for final disposal before V.L.St.Clair Swan Esq., Additional District Judge, Colombo on the 14th day of August 1944, in the presence of Proctor on the part of the Plaintiff, and of Proctor on the part of the Defendant,

it is ordered and decreed of consent that the Plaintiff's action be and the same is hereby dismissed without costs.

It is further ordered and decreed that the Plaintiff do observe the terms of agreement No.591 dated 18.8.41 attested by T.Terrence Fernando and that neither she nor any person on her behalf would at any time hereafter endeavour to compel the Defendant to allow her any alimony or maintenance further than the sum of Rs.25/- a month provided in the said agreement and that she will not nor will molest the said Defendant in any manner hereafter

Sgd: St.Clair Swan  
A.D.J.

The 14th day of August, 1944.

Exhibits

R.7.

Decree in  
Divorce Case  
No.820/D.

14th August,  
1944

- continued.

10

R.8. - AGREEMENT BETWEEN S.W FERNANDO AND  
MARINA FONSEKA

20

R.8.

R.8.

Agreement  
between  
S.W.Fernando  
and Marina  
Fonseka.

11th February,  
1942.

THIS INDENTURE made at Kaldemulla in Moratuwa this Eleventh day of February One thousand nine hundred and forty two Between Sellapperumage William Fernando of Kaldemulla (hereinafter sometimes called and referred to as the party of the first part) and Hewa Donsekage Marina Fonseka of Egoda Uyana and presently of Kaldemulla (hereinafter sometimes called and referred to as the party of the second part)

30

WHEREAS the said party of the first part having separated from his wife about two years ago now finds it difficult to live alone and is desirous of having a suitable person to look after him to attend on him and to be a faithful companion to him and has selected the said party of the second part on the terms and conditions hereinafter mentioned

NOW THIS INDENTURE WITNESSETH :-

40

1. That the party of the second part hereby agrees to be a faithful companion to the said party of the first part and look after him and his



Exhibits

R.8.

Agreement  
between  
S.W.Fernando  
and Marina  
Fonseka.

11th February,  
1942

- continued.

health and all things in her power to please him and to keep him happy.

2. In consideration of the above agreement the party of the first part hereby takes the party of the second part to his house and agrees to pay to the party of the second part a sum of Rupees One thousand (Rs.1,000/-) as remuneration for the said services hereinbefore mentioned

3. In the event of the said party of the second part failing or neglecting to render the said services as aforesaid or becomes unfaithful to the party of the first part the party of the first part shall be entitled to cancel this agreement and will not be liable for the payment of the said sum of Rupees One thousand (Rs.1,000/-)

10

IN WITNESS whereof the said Sellapperumage William Fernando and Hewaponsekage Marina Fonseka have set their hands to this Indenture at the place date month and year in the beginning hereof written

20

Witnesses -

Sgd: Illegibly.

Sgd: S.William Fernando  
(In Sinhalese)

Sgd: Illegibly.

Sgd: Hewaponsekage Marina  
Fonseka  
(In Sinhalese)

R.9.

R.9. - WILL OF S.W.FERNANDO NO.268

R.9.

11 of  
Fernando  
1958.  
February,

No. 268

I, Sellapperumage William Fernando of Kalde-mulla Moratuwa in the Island of Ceylon hereby re-voke all former Wills and testamentary dispositions made by me and declare this to be my last Will and Testament

30

I GIVE DEVISE AND BEQUEATH unto my daughter MILLY AGNES DE SILVA wife of James Frederick Leopold de Silva of Alfred House Avenue, Colpetty, Colombo, absolutely and unreservedly all my real and immovable and personal and movable property estate and effects of whatsoever kind and description and wheresoever situate whether in possession expectancy reversion remainder or otherwise for her own use benefit and enjoyment

40

I HEREBY APPOINT her to be the sole Executrix

of this my last Will.

IN WITNESS whereof I the said Sellapperumage William Fernando have to this my last Will and Testament set my hand at Colombo in the said Island this First day of February One thousand nine hundred and forty

Exhibits

R.9.

Will of  
S.W.Fernando  
No.268.

1st February,  
1940  
- continued.

10 SIGNED by the above-named )  
Testator Sellapperumage )  
William Fernando as his )  
last Will in the joint )  
presence of himself and )  
of us who at his request )  
and in such joint presence )  
have hereunto subscribed )  
our names as witnesses - )

Sgd:  
S.William Fernando  
(In Sinhalese)

Sgd: Illegibly

Sgd: Illegibly

Sgd: Aelian Samarasinghe  
Notary.

20 I, Aelian Samarasinghe of Colombo in the  
Island of Ceylon Notary Public do hereby certify  
and attest that the foregoing last Will having  
been duly read over and explained by me to the  
within named Sellapperumage William Fernando in  
the presence of Semasimanhewa Owen de Silva of  
No.281 Galle Road Wellawatta in Colombo and Iamage  
Edwin of 379 Uyana Moratuwa the subscribing wit-  
nesses thereto all of whom are known to me the  
same was signed by the said Testator (who signed  
his name in Sinhalese characters) and also by the  
said witnesses (the first of whom signed his name  
30 as "S.O.de Silva and the other his name as "L.Ed-  
win") in my presence and in the presence of one  
another all being present at the same time at  
Wellawatta, Colombo aforesaid on this First day of  
February One thousand nine hundred and forty

Date of Attestation -

1st February, 1940.

Sgd: Aelian Samarasinghe  
Notary Public.

SEAL

Exhibits

R.10. - AUTHORITY TO RAYMOND & CO.

R.10.

R.10.  
Authority to  
Raymond & Co.  
14th March,  
1946.

"Nancy Villa",  
Kaldemulla,  
Moratuwa,  
14.3.46.

I hereby authorise Messrs.A.F.Raymond & Co.,  
of Kanatte, to carry out the services (enumerated  
in the sheets annexed hereto marked A & B. which  
have been duly signed by me for verification) at  
my funeral on notification of my death being given  
to them by my daughter Mrs.J.F.L.de Silva or by my  
nephew Mr.A.W.Peris. I expressly desire that  
there should be no alteration to the instructions  
I have already placed with Messrs. A.F. Raymond &  
Co., regarding my funeral unless such alterations  
be under my written consent. It is my express  
wish that particularly my wife from whom I have  
for long been separated should have no hand in the  
arrangements of my funeral.

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Witnesses - Sgd: S.William Fernando.

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A.W.Peiris  
Kaldemulla Sgd: A.W.Peiris  
Iaxapathiya

E.H.P.Fernando  
Village Headman Sgd: E.H.P.Fernando.  
Kaldemulla

R.10A.

R.10A. - FUNERAL ACCOUNT RECEIPT

R.10A.

Funeral  
Account  
Receipt.  
14th March,  
1946.

"A"

S.William Fernando Esq., 14th March, 1946  
"Nancy Villa",  
Kaldemulla, Moratuwa.

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Dr. to -

A.F.RAYMOND & CO.,  
Members of the British Institute of Embalmers  
Monumental Sculptors, Funeral Directors  
and Florists -

KANATTA, COLOMBO.

A/c.....

	To A POLISHED CASKET WITH PLATED Mountings, silk Trimmings etc., Complete ...	Rs.750.00	<u>Exhibits</u> R.10A.
	" EMBALMING REMAINS WITH BEST AMERICAN Preservatives	250.00	Funeral Account Receipt.
	" Hire of Motor Hearse to Moratuwa	75.00	14th March, 1946
	" Swans satin shroud	65.00	- continued.
	" Dressing remains	15.00	
10	" Hire of lowering device	20.00	
	" Personal attendance etc.	25.00	
	" Incidental Expenses	<u>50.00</u> <u>1,250.00</u>	
	If Hearse has to run to Matale, Additional charge of Rs.5/- per return mile.		
	A.F.Raymond & Co., Sgd: S.William Fernando Sgd: Illegibly, Manager Partner		

R.10B. - GRAVE ACCOUNT RECEIPT

"B"

R.10B.

S.William Fernando, Esq., 14th March 1946  
"Nancy Villa",  
Kaldemulla, Moratuwa.

R.10B.  
Grave Account  
Receipt.  
14th March,  
1946.

Dr. to -

A.F.RAYMOND & CO.,  
Members of the British Institute of Embalmers  
Monumental Sculptors, Funeral Directors  
and Florists

KANATTA, COLOMBO

A/c .....

To A FINE AXED GREY GRANITE CROSS  
5'0" high, on 3 Pedestals Rs.475.00  
" FINE AXED GREY GRANITE COPING  
to enclose grave space 4' x 8' 350.00

<u>Exhibits</u>				
R.10B.	To	LETTERS IN IMPERISHABLE RELIEF LEAD	Rs. 75.00	
Grave Account Receipt.	"	TRANSPORT OF MEMORIAL, and Erecting Memorial and coping on Cement Concrete Foundation at Angulana	225.00	
14th March, 1946	"	PAVING INSIDE OF GRAVE AND Filling in Granite Chips	125.00	
- continued.	"	BUILDING UNDERGROUND VAULT FOR BURIAL with concrete reinforced top, sides Cement Plastered size 4' x 8'	225.00	1,475.00
	"	Less SPECIAL DISCOUNT		125.00
				<u>Rs.1,300.00</u>
	A.F.RAYMOND & CO.,	Sgd: S.William Fernando.		
	Sgd: Illegibly Managing Partner.			

R.11.  
Letter signed  
by S.W.Fernando  
(undated)

R.11. - LETTER SIGNED BY S.W. FERNANDO

R.11.  
"Nancy Villa",  
Kaldemulla Road,  
Kaldemulla,  
Iaxapathiya.

This is to inform you, our daughter Dulcie,  
and Austin her husband that I have given full in-  
structions to my daughter Millie in regard to my  
funeral arrangements and I want no one to inter-  
fere with her in the carrying out of these instruc-  
tions. I specially wish that neither you, nor our  
said daughter or her husband should attend my  
funeral or disturb the arrangements I have made as  
stated above. I have sent a copy of this notifi-  
cation to my daughter Millie.

Sgd: S.William Fernando.

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R.12. - LETTER FROM S.W.FERNANDO TO SUPERINTENDENT OF POLICE.

Exhibits

R.12.

The Superintendent of Police,  
Western Province (South)  
Colombo.

R.12.

9.9.52.

Dear Sir,

Letter from  
S.W.Fernando  
to  
Superintendent  
of Police.

9th September,  
1952.

I write to inform you that I made an entry at the Police Station Mt. Lavinia complaining that Mrs. Nancy Catherine Charlotte Fernando (nee Perera) of 396, Laxapathiya Moratuwa, was using obscene language and threatening my life. I wish to bring to your notice that I am in very poor health and am 80 years of age. Since this entry was made, this lady has been continuing to abuse me and unnecessarily humiliating me. I shall be glad if you will please take immediate steps to warn her against a breach of the peace and conduct herself correctly.

Yours truly,

Sgd: S.William Fernando  
(In Sinhalese)

S.William Fernando.

'Nancy Villa'  
84, Kaldemulla Road,  
Laxapathiya.

R.13. -- COMPLAINT BY S.W. FERNANDO

R.13.

EXTRACT FROM THE C.I.B. OF MOUNT LAVINIA  
POLICE STATION

R.13.

Complaint by  
S.W.Fernando.

Date 8.9.52    Time 4.30 p.m.    Page 331    Para.142

8th September,  
1952.

COMPLAINT AGAINST LEGAL WIFE

Sellapperumage William Fernando, 78 years, landed proprietor residing at 84, Kaldemulla Road appears at the Station and complains thus: my legal wife Nancy Catherine Charlotte Perera is away from me for the last 12½ years. I pay her Rs.50/- as maintenance at my own accord. This is not an order from any Court of law. She is not at Laxapathiya in Moratuwa with her female child aged about 26 years who is married. The motive for our being not in terms of intimacy is my daughter Dulcy

Exhibits

R.13.

Complaint by  
S.W.Fernando.  
8th September,  
1952  
- continued.

Charlotte Perera at the age of 19 years was given by my wife without my consent to a certain clerk at Moratuwa. She had been a helping hand to them without my knowledge. I received information today that she would come to my residence tomorrow and would sacrifice her life at my place. Hence I came to inform Police. Her address at Moratuwa is No.396 Station Road Angulana behind the Methodist Church at Laxapathiya. That is all. Read and explained. Sgd: In Sinhalese. Admitted correct. Sgd: P.C.1341 Gurupatham.

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True extract taken by me.

Correct Sgd: Illegibly  
Sgd: Illegibly  
H.Q. Mount Lavinia  
26.9.54

R.14.

Statement by  
Mrs. S.W.  
Fernando.  
24th February,  
1954.

R.14. - STATEMENT BY MRS.D.W.FERNANDO

R.14.

EXTRACT FROM THE R.I.B. MOUNT LAVINIA  
POLICE STATION

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Date 24.2.54. Time 1.30 p.m. Para.3516

x x x x x 24.2.54. 10.45 a.m. Nancy Villa.

Kaldemulla. Mrs.S.William Fernando aged 65 years, residing at No.37, Station Road Angulana, present and states: I am the widow of S.William Fernando. He died on 22.2.54. I was married to William Fernando for the last 39 years. I am not aware whether my late husband made a Will. The Police took charge of one iron safe, one car No.EL4615, one gold watch chain with one gold dollar, one sovereign and a half sovereign, one gold ring with a yellowish stone, one gold ring with a blue stone, one cheque book (Bank of Ceylon) bearing cheque leaves H761190 to 761200, one Silver waist chain about 12 feet long and one spare wheel of car No.EL.4615. Of the property taken charge by the Police, I claim my share due to me as the lawful wife of the deceased. I have no objection to the property being in Police custody (at this stage Mr. Peiris the son-in-law of Mrs.Fernando says that

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561.

he wants to consult a lawyer and leaves the place)  
Mrs. Fernando does not want to state anything further.

Sgd: A.H.Flamer Caldera, H.Q.I. Mt. Lavinia.

True extract taken by me  
Sgd: Illegibly

Correct,  
Sgd: A.H.Flamer Caldera  
H.Q.I. Mount Lavinia  
26.9.54.

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Exhibits

R.14.

Statement by  
Mrs. S.W.  
Fernando.  
24th February,  
1954  
- continued.

R.15A. - PETITION IN INSOLVENCY CASE NO.5569

R.15 (a-e)

In the District Court of Colombo.

IN THE MATTER of the Insolvency of  
D.A.J. Tudugalle of Sedawatte in  
Colombo.

R.15A.

Petition in  
Insolvency  
Case No.5569.  
26th February,  
1954.

20 INSOLVENCY  
No. 5569.

INSOLVENT

A.K.A.Kalyanasundaram Chettiar  
of Sea Street Colombo

PETITIONING-CREDITOR

On this 26th day of February, 1941.

The Petition of the Petitioner above-named appearing by John Wilson his Proctor states as follows :-

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1. That the said D.A.J. Tudugalle having resided for six months next immediately preceding the date of this petition within the District of this Court that is to say at Sedawatta Colombo is indebted to the Petitioning-Creditor in the sum of Rs.3348/30 and the Petitioner has been informed and verily believes that the insolvent above-named did lately commit an act of insolvency within the true intent and meaning of the Insolvent Ordinance in that he failed to pay the aforesaid amount within thirty days of service of the notice hereinafter referred to

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2. The Petitioner files herewith his Attorney's



Exhibits

R.15A.

Petition in  
Insolvency  
Case No.5569.  
26th February,  
1954  
- continued.

Affidavit certified copies of Decree and Journal Entries in Case No.53281 of this Court marked "A" and "B" and Affidavit of personal service of notice on the insolvent by N. Hariharamoorthi marked "C" and true copy of notice marked "D".

YOUR PETITIONER THEREFORE HUMBLY PRAYS that in proof of the requisites in that behalf the estate of the said D.A.J. Tudugalle may be adjudged insolvent and placed under sequestration.

Sgd: John Wilson  
Proctor for Petitioner.

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15B - 15D.

Extract from  
Evidence given  
by Mr.Tudugala  
in Insolvency  
Case No.5569.  
26th February,  
1943.

R.15B - 15D. - EXTRACT FROM EVIDENCE GIVEN BY  
MR. TUDUGALA IN INSOLVENCY CASE NO.5569

In the District Court of Colombo  
IN THE MATTER OF THE INSOLVENCY OF  
D.A.J.TUDUGALLE of Sedawatte  
in Colombo.

No.5569 Ins. Insolvent

A.K.A.Kalyanasunderam Chettiar  
of Sea Street, Colombo.

Petitioning-Creditor

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26th February 1943.

Mr. Adv. Abeywickrema for the Insolvent.  
Mr. Adv. Kandiah for the Petitioning-Creditor.  
Mr. Adv. Curtis for another opposing Creditor.

The Insolvent signs declaration.

D.A.J.Tudugalle, affirmed, Proctor, Colombo.

I am from a fairly affluent family. At the time of my mother's death she was possessed of property. Testamentary Proceedings were initiated in respect of my mother's estate I did not find out the value. I passed out in 1923. I had fairly good practice till 1931-32 I had a good income. I could have saved if I wanted I saved till 1932. I did not buy any properties. I had two bank accounts. In both banks I had monies deposited. I handed the pass books to the assignee. I swear to the truth of the statement.

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(Statement marked C1) I showed the assignee the Pass Books. He said "It is not necessary take them away" In my statement I said that I was handing the pass books. The books are with me now. I can produce the pass books I had two pass books I opened two bank accounts for safety I thought it better to have two bank accounts. I first opened an account in the Hongkong Bank. I think it was in 1926. That is the year I began to practice. I opened the other account two weeks later. The amount deposited in the Hongkong Bank was about Rs.5,000/-. The same amount was deposited in the Imperial Bank. I cannot give the month. Certainly it is in the year I began practice. I took my oaths in April 1923. I got the money from my mother. I was living with my mother. My mother was living with me when she died. My other brothers were also living. I am the fifth in the family. When I heard that I was not getting anything I was not interested in the Will. I knew the of my mother's estate when she died. The estate was heavily indebted. There were administration proceedings in respect of that estate. It must have been worth something. The nett value of the estate was about Rs.20,000 or Rs.30,000. My father died about 40 years ago. My mother died in 1933 about 10 years before that she became indebted. The Rs.10,000 she gave me in 1926 was after selling a land. That is the reason why she did not give me anything under the Will. From 1926 to 1932 I was doing fairly well and I had saved out of my profession. By 1932 I did not have more than Rs.10,000. About 1932 I lost. In 1931 too I was losing. In 1930 I was losing a little. 1929 was fairly good. From 1926 to 1929 my practice was fairly good and I had saved. At the end of 1922 I had about Rs.7,000 or Rs.8,000. My Pass books will bear me out. In 1930 I had no practice. In 1930 there was a general depression and I assigned my loss to the depression. Thereafter my practice was almost nothing. I began borrowing in 1930. In 1930 I borrowed from Muttusamy I was not aware that Mr. Muttusamy was borrowing. At the time he was very sound. In 1934 we were great friends and there was no trouble. His father-in-law came to his rescue. That was because he was lending money on cheques and pronotes at high rates of interest to State Councillors and others - Mr. Molamure and Others. He lost on several. In 1930 I began to borrow money on cheques. In 1929 I also borrowed

Exhibits

R.15B - 15D.

Extract from Evidence given by Mr. Tudugala in Insolvency Case No.5569.

26th February, 1943

- continued.

Exhibits

R.15B - 15D.

Extract from  
Evidence given  
by Mr. Tudugala  
in Insolvency  
Case No. 5569.

26th February,  
1943

- continued.

money on cheques from Muttusamy. Not in 1927 or 1928. In 1927 both bank accounts were functioning. Both started at the same time. When both were started I was financially quite sound. My loss in 1929 was about Rs.7,000 or Rs.8,000. There was no question of politics. There were proposals at the time. In 1929 I had two proposals and I had to spend money by visiting and giving presents for about Rs.2,000 or Rs.3,000. The first one started in 1927 or 1928. I did not get anything from that I had to drop it. The second one also I dropped I spent about Rs.1,500 on that all on presents. The second lady was expected to bring some dowry. Besides these amounts which I spent in 1927 or 1928 or 1929 by way of presents I had no practice and I went on spending. In 1927 I began to spend out of my capital. In 1926 also I had to spend out of my capital. My practice was better than it was in 1930. From 1926 to 1930 I had to live on my capital. I had to replenish by borrowing from other people. I had a car. I bought it in 1926 or 1927. I bought it for Rs.3,000. That is after I opened a bank account. I paid for the car out of the money in the bank. The car was seized by the Fiscal and sold. The Creditor was an Afghan. That was in 1928. I began borrowing money in 1930 for the first time. I cannot give the month. Before 1930 I was not indebted to anybody. The first borrowing was from Muttusamy I later borrowed from Afghans and Chettians and local money lenders.

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To Court: The car was sold in about 1931. Khan Bhai was the Afghan I cannot remember when I first borrowed from him. The notes in 1931 and 1932 were from Muttusamy I cannot remember the exact date. I borrowed from Muttusamy first. In 1933 I became interested in Politics. I was returned but untested. At that time I was in practice. I was getting very little about Rs.200 a month. That was enough for my expenses and maintenance. Before that I was getting at least Rs.200 a month. I could have easily lived within my means. By entering into politics I had to spend money by entertaining friends. For these purposes I had to borrow money. After 1933 I had to borrow about Rs.200 or Rs.300 a month. I had no means of returning the money I borrowed. That was to keep up the show. In 1935 people were not quite satisfied and there was a re-election and there was a contest. I had to spend about Rs.3,000 to Rs.4,000 I had to pay various people those who worked for me

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and those who had hiring cars. This money I had to borrow. Even after that I had to borrow from Afghans and Chettiars I won the contest. In 1933 the present Chairman contested. He is fairly well off. In 1939 there was another election by which time I was deep in debt I may have been in debt to the extent of 7,000 or 8,000. All those debts were incurred because I entered into politics. In 1939 it was a harder contest. I had to spend very large sums I had to spend about Rs.3,000 or Rs.4,000 I had to borrow that too. Thereafter the expenses were mounting and the debts were also mounting. I was the Chairman of the Urban Council from 1939 to 1941. Before that I was Vice Chairman. People did not lend money because of the position I held in the Urban Council but they lent with the hope of getting it back. I did not say that I was entitled to properties. I said I had a life interest in certain properties I was getting a share from properties in Hill Street. That was after my mother's death. My share in the Hill Street property was about Rs.20 to Rs.30. When my mother died she knew that I was indebted I did not tell her that if there were any properties in my name they would be liable to seizure. I do not know whether she knew it. After my mother's death my brothers gave me a certain share of the income as a help. They gave me money in 1933 after I was left out of the Will. In the Testamentary Proceedings my name was disclosed. I knew that I was not entitled to any properties I thought I was entitled I thought that as my mother did not leave anything they would give me. Because they were giving me I thought I was entitled. After the death of my mother in 1933 I was not legally entitled to any share in the Hill Street properties. I was left out of the Will and there was nothing given to me in respect of the Hill Street property I knew that if my brothers refused to give me anything I would not get I knew that my creditors could not seize any share in the Hill Street property. My brothers gave me a share every month. That was 1/8 share, that was Rs.20. The rental from the Hill Street property was about Rs.400 I got Rs.20 as nett income. I told certain creditors that I was entitled to certain shares in the Hill Street property. I also told them that I would give the shares as security. (In evidence I said that I had a life interest in Hill Street property. I gave the numbers also. I mentioned the coronation buildings.

Exhibits

R.15B - 15D.

Extract from Evidence given by Mr.Tudugala in Insolvency Case No.5569.

26th February, 1943

- continued.

R.15c.

Exhibits

R.15B - 15D.

Extract from  
Evidence given  
by Mr. Tudugala  
in Insolvency  
Case No. 5569.

26th February,  
1943

- continued.

On a search of the encumbrances my name was not disclosed. At the time I made the statement I knew that I was not legally entitled to the Coronation buildings). I did not disclose it to put off creditors further.

Q. You knew that if a debtor discloses property a creditor cannot apply for a warrant before seizing the property? A. Yes.

They had applied for warrants. Muthusamy applied for a warrant. That was in 1935. I was examined under 219 on behalf of Kalayanasundaram Chettiar. He got this Decree signed. Mr. Muttusamy got me arrested. The 219 examination was after I was arrested.

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Q. You were brought under a warrant or an attachment for failure to appear under 219?

A. I was brought under a warrant in 1935. That was in Muttusamy's case and also in Kalayanan Sundaram Chettiar's case. I was arrested only once by Kalayansundaram Chettiar and by Muttusamy.

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Q. After you were brought under an attachment the first time you were not examined under 219.?

A. I was examined. That was in 1934 or 1935. That was after my mother's death I said that I had a life interest in the Hill Street property. No other properties.

Q. Did you tell Kalayana Sundaram Chettiar that you would pay this amount in a short time?

A. I told him so. I would somehow pay it. I said that I would get some money from my relations and pay it. I had Mr. Wijewardena in mind.

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From the date of the assignment up to that I paid him Rs.500. He agreed that if I paid him Rs.500 he would not press the matter further. On that condition I paid. It is in the answer I filed. I took him on various dates to compound with my creditors. I knew that I would find the money for it. I knew that I could get it from my relations. I had my brothers in mind. In 1939 my brothers told me that they would help me. In 1939 I was not able to pay my creditors. My brothers helped me from time to time. After the adjudication they did not help me. I sold the car after I entered politics. I was first returned in 1933. The car was sold after that I did not buy another car. I sued to get a car from my brother and cousin. I generally used my brother's or cousin's

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car. My brother's car is a Hillman E 490. My  
 cousin's car is a Morris Z 1249. The Morris car  
 is registered in the name of my cousin and the  
 Hillman in the name of my brother. My brother is  
 a contractor. He owned several cars. He is a  
 contractor of timber sand etc. My cousin is a  
 landed proprietor. His name is D.C.Wijewardena.  
 I used to travel in tram cars. In 1939 to 1941 I  
 used to go by tram cars. In 1939 to 1941 I used  
 10 to go by tram car very often than I. (When I  
 started practice I had books of account. I had  
 them till about 1932 I was sued for office rent  
 and ejection and my books were thrown out. I  
 came that night and put them into another office.  
 The books were therefore about a week. After a  
 week the books were missing I knew that I would  
 be ejected and so I was trying to avoid it. I took  
 time saying that I would pay a portion. Action was  
 stayed for a time. When possession was taken my  
 20 room door was not locked. There was a clerk in  
 charge of the office. When the Fiscal came to  
 have me ejected from the office, my clerk came and  
 told me on what day he would come.

The accounts were from 1927 to 1932). Those con-  
 tained the names of all the creditors and amounts  
 I spent on presents. When I had the practice I  
 thought of starting a copra business. I lost on  
 two transactions and gave it up. That was in about  
 1940. I tried that when I was indebted. For that  
 30 purpose too I had borrowed money. I borrowed money  
 from Mrs. Jayalath I had no books of account for  
 that business I was indebted to Cargills for ac-  
 counts running up to 1941. I had accounts with  
 them for only one year. Nobody recommended me.  
 They wrote to me saying that they were surprised  
 that I had no account with them. At that time I  
 was Chairman of the Urban Council but the letter  
 came to my house. I wrote to them saying that I  
 would be only too glad to open an account. They  
 40 sent me an order for books and catalogues. When-  
 ever I wanted anything I went to them I bought  
 shirts ties and other things. I did not buy any  
 liquor for the elections I had arrack. I became  
 indebted to Rowlands in 1941 for buying Petrol for  
 the elections. The elections were in Kolonnawa.  
 The amount due to Rowlands Garages was for petrol  
 and car materials for a Morris Car. I met with an  
 accident and I had to buy some parts. That car  
 does not belong to me. The accident was in 1940  
 50 or 1941. Before the accident I did not buy any

Exhibits

R.15B - 15D.

Extract from  
Evidence given  
by Mr.Tudugala  
in Insolvency  
Case No.5569.26th February,  
1943

- continued.

Exhibits

R.15B - 15D.

Extract from  
Evidence given  
by Mr. Tudugala  
in Insolvency  
Case No. 5569.

26th February,  
1943

- continued.

car parts from Rowlands. I did not give a car for repairs to Rowlands. The same car was given by Mr. Wijewardena and the bills were sent to me. The car was at my disposal when I was Chairman. I am not using it today. The car was not always at my disposal. At times I used to get it. At times I travelled in buses I do not know from where the Morris car was brought. May be in 1929. It was bought second hand before that my cousin had a number of cars. I do not know the names of the other cars. He had a Hillman car. I do not know the number. That I used only once. That is a bigger car. That was used for big occasions. Normally I used the Morris car. I stayed with my brother. He has a garage. There are 4 garages and he had lorries. Morris car N.1249 was not parked at our place. Occasionally it was parked. There was a driver for the car - one W.B. Perera. As Chairman I was getting an allowance of Rs.75/-. It was a car allowance. If the Chairman does not have a car he is given the car allowance. Out of this car allowance I paid Perera about Rs.40/- to Rs.45/-. His monthly salary was Rs.30/-. I paid him Rs.30/- every month. My cousin did not pay him anything. That was since the car was bought. He bought it after I became Chairman. I was elected Chairman on the 5th January 1939. I began using the car in May. This car was bought by my cousin in May. I do not know from whom he bought it. I did not see the car before it was bought. Driver Perera was engaged after the car was bought. In May 1939 I drove the car. The driver used to do work for my brother at his house. I bought goods from Rowlands garages on a number of occasions - all Morris car goods. I bought tyres for Mr. Muttusamy. I owed him money and when I asked for time he asked me to buy some tyres. That was in 1935 or 1936. I did not buy tyres for Morris car. I did not buy tyres from Rowlands. I borrowed money on cheques on both the banks. I borrowed from D.P. Kannangara on cheques.

I did not open two accounts for the purpose of deceiving creditors, neither for obtaining time. Matherina Hamine is a lady. She is a relation of mine. Mrs. L.M. Joachim is a money lender. That claim was settled. I have disclosed only one Afghan. I had transactions with number of Afghans. Similar sums are due to about 3 to 4 Afghans. I owed small amounts to Afghans to at least 6 Afghans. Rs.100, Rs.200, Rs.300, Rs.400. I have paid them

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the amounts borrowed but not the face value. The small amounts would be about Rs.50 to each. I have disclosed in the balance sheet only one Afghan - Abdul Latiff Bhai. The face value is Rs.150/-. I borrowed Rs.100/-. I paid Rs.100. To the others also a balance is due. In the case of the other Afghans I have not disclosed them because they are not pressing. Some are prescribed. The creditors I disclosed were those who were pressing me. I paid off Mather's claim. I paid him in 1939.

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To Court: Why did you put down in your balance sheet a debt of Rs.220 to Mather in 1942?

A. Because satisfaction of Decree has not been entered. I am not seeking to amend my balance sheet. I paid part of Katherina Hamine's debt. The pronote was for Rs.1,500.

XD. by Mr.Curtiss: By 1930 my capital of Rs.10,000 had been exhausted. Thereafter I was practically living on credit. My average income from my practice was about Rs.150. I am unmarried. I had no dependants. (In 1939 my financial position was desperate. In May 1939 I came to know Mrs.Jayalath. I did not borrow a sum of Rs.1,965. I gave a pronote for Rs.1,965/- on the 16th May 1939. On the 16th May 1939 by letter I promised to marry her. When she filed action I asked for leave to appear and defend. I did not say that no money was due. I did not say in my answer that I paid all the amounts borrowed from Mrs. Jayalath. She sued me in case No.4368 Summary. On the date of the inquiry the letter of the promise of marriage was produced. Security was ordered before I was allowed to defend the action. I could not furnish the security. I then filed an Affidavit to pay the amount by instalments of Rs.150. I consented to judgment. She wanted a promissory note. She said that was the amount due. I accepted. I cannot say how much I borrowed. When I gave the promise to marry her I intended to marry her. There was an election in 1939. The promise to marry was independent of the borrowing. She sent me a letter after that saying that there was a proposal from a B.A. She wanted to marry him. I consented to her withdrawing. She is not yet married.

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I hope to pay this lady by getting money from my relations and friends. In 1939 I went to see this lady. I did not go in car Z-1249. I went in a hiring car. I went by train to Gampaha. I gave this lady presents. She did not give me presents.

Exhibits

R.15B - 15D.

Extract from Evidence given by Mr.Tudugala in Insolvency Case No.5569.

26th February, 1943

- continued.

R.15E



Exhibits

R.15B - 15D.

Extract from  
Evidence given  
by Mr. Tudugala  
in Insolvency  
Case No. 5569.

26th February,  
1943

- continued.

I was engaged to her for about 2 or 3 years; from the time I borrowed money from her. The money was given to the broker to be given to me. There were occasions on which the broker did not give me the money. For that too she wanted a pronote. That was the time I was engaged to her. She trusted the broker and gave him the money. I did not visit her frequently. I went once in three months. On some occasions when I visited her I obtained money from her. I was in love with this lady. She cooled off and said she wanted to marry someone else. That was after two years' engagement. She is a widow.

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Q. This lady wrote to you that unless you were going to marry her her prospects would be ruined?

A. No.

To Court - Her father promised to give a gift of land and the father was insisting that the gift be made after the marriage. I told her let the deed be attested and that it could take effect after the marriage. She knew that I was indebted therefore she gave it up. From time to time she asked me whether I was going to marry her. I did not tell her that my circumstances were bad and that I could not marry her. When she found out that I was indebted she was not very keen. In 1939 she did not know that I was heavily indebted. She promised me lakhs and lakhs and the lakhs did not come. She sued me in 1940. I did not have any receipts. I returned the money personally and part of it through a broker.) A member of the Urban Council before the reformed Ordinance had to have certain income qualifications. In 1933 my income was about Rs.250 to Rs.300 a month; purely from my profession. In 1935 my income was about Rs.200. In 1939 my income was about Rs.200. It never went below the income qualification. I was paying Income Tax. In 1936 I paid Rs.25/-. That was the unit rate. In 1935 I could not pay and I had to pay a default. I paid Rs.40/-. In 1939 I paid Rs.25/-. I was having all the income all these

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15a. years. (D.P. Kannangara had me arrested on a warrant in 1934. I came to Court and disclosed a life interest in the Hill Street property. I said it was a life interest that I was getting and that the income was Rs.40/- from that property) (In 1934 I did not have any life-interest.) Since the date of my mother's death I have no interests in the Coronation Buildings. Car Z-1249 met with an accident. I was driving the car. It is covered by

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insurance. The Insurance Company did not settle the bill. It was due to my fault. It collided with another car. The accident was not reported to the Police. I took it to Rowlands for repairs and they sent me the bill. The bill was paid in full. The car parts were bought in 1940. That was after the accident. That was also for this Morris car. When I bought those parts the car had met with the accident. At that time I also was driving the car. That was done by an ordinary repairer on my instructions. That time also the Insurance Company did not pay. I paid the man. I did not have any account with the Mercantile Bank. I cannot remember issuing a cheque for Rs.25 on the Mercantile Bank. I did not give any cheque on the Mercantile Bank to Kannangara. I remember seeing the assignee on the 22nd September. I signed a statement.

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(Shown C2) Did you give this document to the Assignee?  
A. Yes.

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(Witness reads C2) At that time I had no bank accounts. I told him that the bank accounts were closed about 10 years ago. After I was ejected and after Mrs. Jayalath proved her case I did not visit her. Mr. Rupesinghe may have gone but I did not go. I did not take Mr. Rupesinghe to Mrs. Jayalath's house. I did not tell my proctor to ask Mr. Jayalath not to oppose the certificate. My Proctor told me that he had been there. He did not tell me that he had asked her not to oppose the certificate. I did not lend the Morris car to my proctor. I did not come in this car to Hulst-dorp.

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XXN. In or about 1931 I gave up my profession as a Proctor. During this period of five years I got a sum of Rs.10,000 from my mother. That was given as a start for my life. Any monies I spent during the five years was more from the money I got from my mother than from my earnings. During this period of 5 years my income was between Rs.150 to Rs.200. I bought a car which costs me Rs.3,500. Apart from that I spent some money for office furniture - about Rs.500 to Rs.600. In all I spent about Rs.4,000 to Rs.5,000. The balance was exhausted in about 1931. About 1931 or 1932 I was suffering from Malaria. I was suffering constantly from Malaria. About that time I had to withdraw from my practice. Thereafter apart from Malaria I was suffering from Hydrocele. I took treatment for

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Exhibits

R,15B - 15D.

Extract from Evidence given by Mr.Tudugala in Insolvency Case No.5569.

26th February, 1943

- continued.

Exhibits

R.15B - 15D.

Extract from  
Evidence given  
by Mr. Tudugala  
in Insolvency  
Case No. 5569.

26th February,  
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- continued.

about 3 or 4 years. Native treatment proved unsuccessful, and I had to be operated on and for that I had to go to General Hospital. For all that illness I would have spent about Rs.1,500. I swear to the correctness of the statement made to the assignee. In that statement I have said that my financial difficulties were mainly due to illness and the elections. From 1938 to 1941 I was dealing with politics. That meant a fair sum of money. When I borrowed those monies I did not make up my mind never to pay back the money. Decree was entered in favour of Muthusamy and that was assigned to Kalayana Sunderam Chettiar. After that I have paid a sum of Rs.500. I have stated that in my answer in the Insolvency case after adjudication. Kalayana Sunderam Chettiar told me that he bought the decree of Rs.3,000 for Rs.1,000. It was only for Rs.800. I have referred to the deed of assignment in my statement. With regard to the bank accounts, I opened in 1926, these bank accounts were closed. They were closed in 1929 or 1930. I was obliged to close my accounts because my money was finished. It was shortly after that that I had to withdraw from practice. I withdrew from practice because I was not getting any practice. I was sued for arrears of house rent in respect of my office and I was jected. With regard to the payment of income tax I received a notice of assessment from the Income Tax Department. I objected to the Assessment on different occasions. The first time I paid Rs.25. That was in 1933 when I was in practice. I gave up active practice in 1933. The maximum amount I have paid as income tax was Rs.45 default. That was in 1935. At that time I was getting some professional income. In 1933 I did not give up my practice entirely. When I closed my bank accounts in 1929 or 1930 I did not open any other bank accounts. In 1929 I lost about Rs.7,000 to Rs.8,000 out of the money that was in the bank. The marriage proposals were between 1926 and 1929, when I incurred certain expenditure which went out of my bank money. To Mrs. Jayalath, I had given a promissory note and a promise to marry. It was a conditional agreement. The marriage was to take place within six months if she fulfilled her agreement. The agreement is with her. She had to give me certain lands. She did not give me any property. Apart from Mrs. Jayalath not fulfilling her promise she wrote to me a number of letters. I mark three letters 'undated' 11, 12, and 13. Those

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10 letters contain the signature of Mrs. Jayalath. Mrs. Jayalath did not want to sue me on the Urban Council Kolonnawa, Mr. Umagiliya who went on libelling me about my indebtedness. I have disclosed a number of liabilities in the balance sheet. There were no claims as far as certain Afghans were concerned and therefore I did not enter them in the Balance Sheet. Some of them were prescribed. I entered in the balance sheet creditors who had claims and who did not obtain their claims. For the first time when I was arrested under the decree under Mr. Muthusamy I had a life interest in Hill Street property. I did not intend to deceive my creditors. I have paid Muthusamy on different occasions and he has been paid more than what I borrowed. I have attested a deed for him for which the stamp duty has not been paid by him. There is nothing due to Muthusamy.

20 I am not the real owner of Car Z.1249. Mather was also a money lender. The debt due to him is Rs.220. That money has been paid.

Advertise certificate meeting for 9th April.

Sgd: W. Sansoni.

Additional District Judge.

R.15E. - JUDGMENT IN INSOLVENCY CASE NO.5569.

J U D G M E N T

30 The Insolvent is a Proctor practising in Colombo from 1926 and according to his own admission he had a fairly good practice till 1931-32. He stated he had a good income and he could have saved money if he wanted to do so. He admitted that he did save money till 1932. He had two banking accounts in 1926. One in the Hongkong & Shanghai Bank and the other at the Imperial Bank.

40 The Insolvent's mother was a wealthy woman who died after the Insolvent became a Proctor. She started the Insolvent well in his profession and gave him the money with which he opened his banking accounts. The Insolvent's mother left a Will leaving nothing to the Insolvent. She died in 1933. The Insolvent suggests that he was given nothing under the Will because he was given Rs.10,000/- when he started practice in 1926. The other suggestion is that he was cut off as he was improvident and heavily indebted.

Exhibits

R.15B - 15D.

Extract from Evidence given by Mr. Tadugala in Insolvency Case No.5569.

26th February, 1943

- continued.

R.15E.

Judgment in Insolvency Case No.5569.

9th April, 1943.

Exhibits

R.15E.

Judgment in  
Insolvency  
Case No.5569.9th April, 1943  
- continued.

The Insolvent stated he began borrowing money in 1929 on cheques. Although he had previously stated that he actually saved money till 1932. He also stated that in 1929 his loss was about Rs.7,000/- or Rs.8,000/-. It is impossible to place any reliance on this sort of evidence. Again although the Insolvent had stated that he had a fairly good practice till 1931 and had a good income and had saved money when later he was asked to account for his borrowing money in 1929 he stated not realizing how inconsistent this was with the evidence he had already given he had no practice and went on spending out of his capital. He got deeper into the mire when he added "from 1926 to 1930 I had to live on my capital. I had a

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car ..... The car was seized by the Fiscal and sold. The creditor was an Afghan. That was in 1928". I began borrowing money in 1930 for the first time. Before I was not indebted to anybody. The first borrowing was from Muthusamy. I later borrowed from Afghans and Chettiars and local money lender. When the hopelessly contradictory nature of this evidence was shown to the witness he glibly stated "the car was sold in about 1931".

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When the Insolvent found himself in this financial mess he resorted to politics in 1933. He obtained a seat in the Kolonnawa Urban Council - uncontested. All that time he says he was earning about Rs.200/- a month which was enough for his expenses and maintenance. He admitted also that he could easily have lived within his means. Instead of doing so he pretended to be wealthy and to keep up appearance began to entertain and spend money lavishly. The Insolvent admits that for such "entertaining" he had to borrow money about 200/- to 300/- a month and he also admits he had no means of returning the money he borrowed. He was borrowing money "to keep up the show" his own expression.

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The Insolvent frankly admits that in 1935 the electorate was not quite satisfied with him and at the next election his seat was contested. He had to spend about 3,000/- to 4,000/- which, of course, he had to borrow. Even after he won the contest he had to get monies from Afghans and Chettiars. The Insolvent was elected Chairman of the Urban Council in 1939. He states that in 1939 he had to face another contest and he was then deep in debt. All these debts he states were

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incurred because he entered into politics. But he forgets he was very much in debt long before and his car was even seized and sold by Afghan creditors.

10 In 1939 he had to spend larger amounts and borrowed all the money he wanted. He there adds "Thereafter the expenses were mounting and the debts were also mounting". He was there elected Chairman of the Council and was so till 1941. The Insolvent has admitted "In 1939 I was not able to pay my creditors".

20 The Insolvent denied that money was lent to him because of his position in the Urban Council - he maintained that the creditors lent with the hope of getting it back. The Insolvent gave them reasons for this false hope. He knew he got nothing under the mother's Will. Yet he falsely stated to his creditors that he had a life-interest in certain properties. He admits he made such a statement. He tried to justify this false statement by stating that his brothers gave him a share of the rent of a property in Hill Street and therefore he thought he had a life-interest. It is very hard for me to accept this explanation. The Insolvent's evidence in regard to this is just as unsatisfactory as his evidence as to when he began to borrow or get into debt referred to above.

30 His evidence on this point is: "I said I had life interest in certain properties. I was getting a share from properties in Hill Street. That was after my mother's death. My share in the Hill Street property was about 20/- - 30/-. When my mother died she knew I was indebted. After my mother's death my brothers gave me a certain share of the income as a help. They gave me money in 1933 after I was left out of the Will. I knew that I was not entitled to any properties. I thought I was entitled. I thought that as my mother did not leave me anything they would give me. Because they were giving me I thought I was entitled. I was not legally entitled to any share in the Hill Street properties. I knew that my creditors could not seize any share in the Hill Street properties. I told certain creditors that I was entitled to certain shares in the Hill Street property. I also told them I would give the shares as security".  
40 There is much more of the same sort of evidence. There can be no doubt that the Insolvent made his creditors believe that he was entitled to certain shares in Hill Street properties and even offered  
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R.15E.

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to give them as security. He knew, so he says, that he disclosed property a creditor would not be able to obtain a warrant for his arrest. And warrants had actually been applied for. When examined in Court under Section 219 of the Civil Procedure Code the Insolvent admitted he gave false evidence by stating that he had a life interest in the Hill Street properties.

In 1932, before his political career, the Insolvent was sued for office rent and for ejection. He stated that his books of account were then thrown out. That was how he at first tried to account for the absence of books of account even to show his earnings as a Proctor. He then stated that he went and got his books and put them in another office where they were for about a week and after that the books were missing. This is a story that I cannot believe. A Proctor in practice would surely not be so callous about his books of account. These books, the Insolvent admits, contained the names of all his creditors as well as his expenses.

In 1940 the Insolvent started to do business in copra. For that too he borrowed money although he knew in 1939 that he could not meet his liabilities. He borrowed money from a widow Mrs. Jayalath to whom he was engaged to be married. He got all the money he could from her and eventually did not marry her. For his copra business the Insolvent admits he kept no account books. He states he gave up the business after two transactions. Even if that were the truth, which I doubt, surely accounts would have been kept and a book opened.

This business having been started in 1940, the excuse he gave for the loss of the books kept in 1932 cannot answer for the absence of books in 1940 for the copra have which he started on borrowed capital. Has the Insolvent made a full disclosure of his affairs? I think not. Besides what I have already observed above, the Insolvent has admitted that he had transactions with a number of Afghans but he had only disclosed one. He admitted that he owed similar sums to about 6 Afghans although he only mentioned one in his balance sheet. "To the others also a balance due. In the case of the other Afghans I have not disclosed them because they are not pressing". Could any Court believe this reason given by a proctor for not disclosing creditors in his balance sheet? If those Afghans were disclosed would they not oppose the granting

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of a certificate? Is it possible to think that this non-disclosure was for any purpose other than to benefit the Insolvent. In other words, it was done dishonestly.

Take again the case of Mather's debt which is shown in the balance sheet. The Insolvent admitted that he paid off this claim of Mather's in 1939. Why then did he put down a debt of 220/- to Mather in 1942 in his balance sheet? What is the explanation given by this Insolvent a proctor: The reason it was shown as a debt is because satisfaction of the decree has not been entered. Could an explanation be more stupid: That the explanation is false is obvious.

The two cases - Afghan claims and Mather's debt show quite clearly that the balance sheet is a false document. The Insolvent has deliberately made false statements and wilfully and dishonestly concealed the true state of his affairs. When he was asked if he would like to amend his balance sheet he replied that he was not going to do so.

On considering all the evidence led I cannot help coming to a definite conclusion that :-

- (1) The Insolvent has not made a full and true disclosure of his affairs.
- (2) The balance sheet filed by the Insolvent is both incomplete and false to the knowledge of the Insolvent.
- (3) That the Insolvent has concealed and withheld from the Court his books of account with fraudulent intent.
- (4) That the Insolvent contracted debts under false pretences - "keeping up a show" and when he knew he had no means of paying his creditors.
- (5) The Insolvent obtained the forbearance of his creditors by grand and false pretences and even resisted execution by stating falsely that he was possessed of property.

The Insolvent is a proctor and also held a very responsible position as Chairman of an Urban Council and I cannot help thinking that he made use of his position to borrow money which he had not the remotest chance of paying back.

He has in my opinion deprived himself of the

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- continued.

right to a certificate. I accordingly refuse him one.

Sgd: W.Sansoni  
A.D.J.

The foregoing is a true copy of Petition, Evidence of the Insolvent and Judgment filed of record in D.C.Colombo Case No.5569 Insolvent.

Sgd: Illegibly  
Asst. Secretary, D.C. Colombo.

R.20.

Will of  
D.S.W.Samarakone.  
No.541.

13th June, 1954.

R.20. - WILL OF D.S.W.SAMARAKONE NO.541

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No.541.

R.20.

THIS IS THE LAST WILL AND TESTAMENT of me Don Simon Wijewickrema Samarakone of No.649 Havelock Road in Colombo.

1. I do hereby revoke cancel and annul all Last Wills and Testaments Codicils and other writings of a testamentary nature heretofore made or done by me and declare this to be my last Will and Testament.

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2. I do hereby nominate constitute and appoint the Public Trustee and Mr.S.R.Amerasekera Proctor S.C. and Notary Public as my Executors of this my last Will and Testament -

3. I do hereby give devise and bequeath :-

a. To Mrs.D.D.W.Samarakone all that property called and known as Ambagahahena Estate situated at Borelesgamuwa.

b. To Victor Samarakone all that land and buildings at Bokundara Junction subject to the life interest of Solomon Samarakone.

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c. To Victor Abeygunasekera Stanley and Reggie Samarakone the property bearing Assessment No. 1022 Maradana Road Borella in equal shares.

d. To the unmarried daughters of Mrs.D.D.W.Samarakone the property bearing Assessment Nos.238 and 238(1) Galle Road Colpetty subject to the life interest of Mrs.D.D.W.Samarakone.

4. I do hereby devise and bequeath all my personal belongings and household furniture to Vernon and Bunny Samarakone.

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5. I give and bequeath half share of the firm of Samarakone Bros. to Victor Abeygunasekera and the other half share to Stanley and Reggie Samarakone in equal shares in the event of any dispute that may arise regarding the accounts of the said firm I hereby empower and authorise Mr. George de Saram and Mr.S.R.Amerasekera to be Arbitrator.

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R.20.

Will of D.S.W.  
Samarakone.  
No.541.

13th June, 1954  
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10 6. It is my will and desire that the firm of Samarakone Bros. be floated into a private limited liability Company and Mr. George de Saram be given the option of being a Director of the firm on his paying for the qualifying shares.

7. I do hereby direct that the Public Trustee do take over the rest and residue of the Estate both movable and immovable and hold the same in trust for the legatees hereinafter mentioned, to be administered in consultation with my nephew Stanley Bunny Reggie and Vernon Samarakone hereinafter called "My nephews"

20 8. I do hereby direct the Public Trustee to collect all income from the said properties and interest due on my investment and deposit the same in a Bank in Colombo on an account called the "Samarakone Trust Fund".

9. It is my will and desire that the Public Trustee should after the payment of the Estate Duty and Testamentary expenses out of the movable and immovable properties under his control make the following payments:-

30 (a) Rupees One and a half lakhs (Rs.150,000/-) for the building and equipment of a Hospital at Wewala Piliyandala on the land referred to in paragraph 11.

(b) Rupees Seventy five thousand (Rs.75,000/-) to the firm of Samarakone Bros. to be utilised for its development and continuity in equal shares to my three nephews mentioned in paragraph 5 above.

40 (c) Rupees Fifteen thousand (Rs.15,000/-) for the grant of scholarships for the education of my relations or their children at the discretion of the Public Trustee

(d) Rupees five thousand (Rs.5,000/-) for the building Fund of the Y.M.B.A. Colombo.

(e) Rupees twenty five thousand (Rs.25,000/-) each to the daughters of the late D.J.W.Samarakone.

(f) Rupees twenty five thousand (Rs.25,000/-)

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Will of D.S.W.  
Samarakone.13th June, 1954  
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each to the unmarried daughters of Mrs. D.D.W. Samarakone.

(g) Rupees twenty five thousand (Rs.25,000/-) each to Vernon Bunny Reggie and Victor Samarakone.

(h) Rupees ten thousand (Rs.10,000/-) to my niece Mrs. J.P.A.S. Ratnayake.

(i) Rupees three thousand (Rs.3,000/-) each to the sons and daughters of Solomon Samarakone except Victor Samarakone.

10. I do further direct the Public Trustee to pay the following allowances during the duration of the trust from the "Samarakone Trust Fund". 10

(a) Rupees two hundred (Rs.200/-) a month to Solomon Samarakone.

(b) Rupees thirty five (Rs.35/-) a month to Marshall Perera of Samarakone Bros.

(c) Rupees thirty five (Rs.35/-) a month each to my clerks Dias and Croning.

(d) Rupees thirty five (Rs.35/-) a month to J.A. Thomas Singheo of Samarakone Bros. 20

(e) Rupees six thousand (Rs.6,000/-) to be distributed annually to my poor relations in need of assistance at the discretion of the Public Trustee and my nephews.

11. I do hereby direct the Executors to set apart my bungalow at Simondale Group ~~wewela~~ with five acres of land or any other suitable site in consultation with the Director of Medical and Health Services and my Nephews for the building of a Hospital with a Maternity Ward in the name of Mr. & Mrs. D.C.W. Samarakone my parents to be gifted to the Government. 30

12. I do hereby give the Public Trustee the right to sell alienate or invest in gilt-edged Securities any part of the movable and immovable properties under his control in consultation with my nephews to carry out the directions of this my last Will and Testament.

13. I direct the Public Trustee to erect two separate monuments for my parents and arrange for the cremation of my remains at the new Burial grounds at Thumbowila and for the erection of a suitable monument. 40

14. I do further direct the Public Trustee to incur any expenditure he may deem fit for the

development of my estate at Kahapola in consultation with my nephews.

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15. I do hereby direct the Public Trustee to build houses on my lands at Pamenkade.

Will of D.S.W. Samarakone.

16. I do further direct the Public Trustee to release from the Trust to my nephews hereunder mentioned in the event of their marriage:-

13th June, 1954  
- continued.

a. The property bearing Assessment No. 649 Havelock Road to Bunny Samarakone.

10 b. The property bearing Assessment No. 314 Galle Road Bambalapitiya to Reggie Samarakone.

c. The property bearing Assessment No.35(1) & (2) Kaviratne Place to Vernon Samarakone.

17. It is my will and desire that all bequests made to Stanley Samarakone are subject to the condition that he lives with his mother at Boralesgamuwa until the date of his marriage and provided that he married a partner of equal social status.

20 18. It is my will and desire that after a period of five years the Public Trustee shall terminate the Trust and hand over the rest and residue of the movable and immovable properties and any balance monies left to Stanley Bunny Vernon and Reggie Samarakone to whom they are finally devised and bequeathed.

30 In Witness whereof I the said Don Simon Wijewickrema Samarakone have hereunto and to another of the same tenor and date as these Presents set my hand at Havelock Road in Colombo on this Thirteenth day of June One thousand nine hundred and fifty four

SIGNED by the said Don Simon )  
Wijewickrema Samarakone the )  
Testator above-named who was )  
of sound mind memory and un- )  
derstanding as and for his )  
Last Will and Testament in the )  
presence of us present at the )  
same time who at his request )  
and in his presence and in )  
the presence of each other )  
have hereunto subscribed our )  
names as witnesses )

Sgd:  
D.S.W.Samarakona.

40 Sgd: M.L.F.Jayawardena  
Sgd: Andrew C. Dias.

Sgd: D.A.J. Tudugalle,  
N.P.

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R.20.

Will of D.S.W.  
Samarakone.13th June, 1954  
- continued.

I, DON ARTHUR JOSEPH TUDUGALLA of Colombo in  
Island of Ceylon Notary Public do hereby certify  
and attest that the foregoing Instrument having been  
read by the said Don Simon Wijewickrema Samarakone  
who has signed as "D.S.W.Samarakone" who is known  
to me in the presence of Mandadige Lakshman Fer-  
nando Jayawardena who has signed as "M.L.F.Jayawar-  
dena" of Dampe Piliyandala and Andrew Charles Dias  
who has signed as "Andrew C.Dias" of No.7 Yakkala  
Estate in Yakkala both of whom are also known to  
me the subscribing witnesses hereto and who de- 10  
clared that they are well acquainted with the said  
Testator the same was signed by the said Testator  
and also by the said witnesses and by me the said  
Notary in my presence and in the presence of one  
another all being present together at the same  
time at Havelock Road in Colombo aforesaid on this  
Thirteenth day of June One thousand nine hundred  
and fifty four and that at the time of executing 20  
this last Will and Testament the Testator appeared  
to be of sound and disposing mind memory and under-  
standing and to have understood the contents of  
this last Will and Testament.

Which I Attest

Sgd: D.A.J.Tudugalla  
Notary Public.

Date of Attestation -

13th June, 1954.

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R.20A. - AFFIDAVIT OF D.A.J.TUDUGALLIA and  
M.L.F.JAYAWARDENA IN WILL CASE NO. 16308

Exhibits

R.20A.

In the District Court of Colombo.

R.20A.

Affidavit of  
D.A.J.Tudugalla  
and M.L.F.

IN THE MATTER of the LAST WILL AND TESTAMENT  
of DON SIMON WIJEWICKREMA SAMARAKONE of  
No. 649 Havelock Road Wellawatte Colombo  
Deceased.

Jayawardena in  
Will Case No.  
16308.

17th February,  
1955.

THE PUBLIC TRUSTEE OF CEYLON

No.16308/T

Applicant

- and -

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REGINALD PERCY WIJEWICKREMA  
SAMARAKONE of No.649 Havelock  
Road Wellawatte Colombo

Opposing Petitioner

WE, DON ARTHUR JOSEPH TUDUGALLIA of Sedawatte  
Walauwa Grandpass Colombo MANDADIGE LAKSHMAN FER-  
NANDO JAYAWARDENA of Dampe Peliyandala do solemnly  
sincerely and truly declare and affirm and ANDREW  
CHARLES DIAS of Moratuwa do make oath and say as  
follows :-

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1. We knew and were well acquainted with Don  
Simon Wijewickrema Samarakone who died on the 22nd  
November, 1954.

2. The said Don Simon Wijewickrema Samarakone  
duly executed his last Will and Testament bearing  
No.541 dated 13th June 1954 now filed of record in  
case No.16308 Testamentary of the District Court  
of Colombo marked 1.

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3. The said Don Simon Wijewickrema Samarakone  
on the 13th June 1954 at No.649 Havelock Road  
Colombo having duly read over and understood the  
said document marked 1 declared it to be his last  
Will and Testament and signs it in our presence all  
being present at the same time. The first named  
of us signed it as attesting witnesses at the same  
time and place.

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4. The signature of "D.S.W.Samarakone" in the  
said document is the act and deed of the said Don  
Simon Wijewickrema Samarakone. The signature  
"D.A.J.Tudugalle" therein is the act and deed of  
the first named of us. The signature M.L.F.Jaya-  
wardena is the act and deed of the second name of

Exhibits

R.20A.

Affidavit of  
D.A.J.Tudugalle  
and M.L.F.  
Jayawardena in  
Will Case No.  
16308.

17th February,  
1955  
- continued.

us and the signature "Andrew C.Dias" is the act  
and deed of the third named of us.

5. We further state that the said Don Simon  
Wijewickrema Samarakone at the time he signed the  
last Will No.541 marked 1 was to all appearances  
and we verily believe of sound mind memory and  
understanding and appeared to have understood the  
contents of the said last Will and Testament.

1 and 2 affirmed and signs } 1. Sgd: D.A.J.  
at Colombo on this 17th } Tudugalla 10  
day of February, 1955 } 2. Sgd: M.L.F.  
Jayawardena

Before me,

Sgd: J.H. Forbes,  
J.P.

3. SWORN to before me at } 3. Chas. C. Dias.  
Colombo this 17th day of }  
February, 1955 }

Before me,

Sgd: J.H. Forbes,  
J.P.



## REGISTER OF DEEDS + 1950

No.	Date	Nature of Instrument	Place of Execution	Grantor	Grantee	District of Registration	Name of Land	Consideration Stamps on duplicate
448	January 13	Transfer	Sedawatta	1.Gonagiri Hewagamage Don James 2.Do. do. do. George 3.Do. do. Dona Charlotte Wimalawathie 4.Do. do. Don Charles 5.Do. do. Lilly Nandawathie	Bulathsinalage Merlyn Silva	Colombo	Gorakagaha-watta	Rs.4000/- Rs.63/-
449	February 1	Gift	Dehiwala	Maria Helen Keyt	1.Maria Ethel de Silva 2.Niliya Doreen Mathan	do.	Nugagaha-watta and Kahatagaha-watta.	Rs.6000/- Rs.95/-
450	1	Transfer	Sedawatta	1.Mohoppu Aratchige Andy Perera 2.Laura Samarakoon	Panangalage Dias Chanderisiri Gunatilleke Perera	do.	Weragoda-watte	Rs.1000/- Rs.15/-
451	3	Last Will & Testament	Dehiwala					
452	7	Transfer	Sedawatta	John Edmund Dias Abeysinghe	Hingurugala Wedikara Aratchige Mahindasiri Perera	do	Nos.45 & 22 Sedawatta	Rs.1000/- Rs.15/-
453	8	Gift	Sedawatta	Gonagiri Hewage Don James	1.Gonagiri Hewagamage Don George 2.Do. do. Dona Charlotte Wimalawathie 3.Do. do. Don Charles 4.Do. do. Dona Lillie Nandawathie.	do.	Kadurugaha-watta	Rs. 500/- Rs.10/-
454	8	Partition	Sedawatta	1.Gonagirihewagmage Dona Charlotte Wimalawathie 2.Do. do. Lilly Nandawathie 3.Do. do. Don George 4.Do. do. Don Charles	Same Parties			
455	18	Gift	Colombo	Gonagiri Hewagamage Dona Lilly Nandawathie	Mahatantrige Richard Peiris	do.	Kadurugaha-watta	Rs.1000/- Rs.15/-
456	March 1	Lease	Colombo	1.Mahagamage William Perera 2.Do. Abraham Perera	Nagappa Pillai Krishina Sami Pillai	do.	Kottagaha - Watte	Rs.240/- Rs.24/-
457	27	Last Will & Testament	Sedawatta					
458	July 11	Transfer	Sedawatta	Patherige Catherina Perera	Veerappan Naidu Letchimai Naidu	do.	Waluwa-watte	Rs. 200/- Rs. 4/-
459	28	Lease	Colombo	Sara Umma	M.Noor Mohamadu Abdul Cader	Kandy	Hantenne-hena	Rs. 500/- Rs.6.50
460	30	Gift	Sedawatta	1.Biyanwellage Romanis Perera 2. Do. Aney Perera 3. Do. Anulawathie Perera 4. Do. Agnes Perera	1.Beiyanwillage Abraham Perera 2. Do. Kalyanawathie Perera	Colombo	Kongaha-watte	Rs. 200/- Rs. 4/-



No.	Date	Nature of Instrument	Place of Execution	Grantor	Grantee	District of Registration	Name of Land	Con- sideration	Stamps on Du- plicate
461	<u>Au- gust</u> 6	Gift	Saidewatte	1. Biyanwellege Romanis Perera 2. Do. Abraham Perera 3. Do. Kalyanawathie Perera	1. Byanwillage Agnes Perera 2. Do. Aney Perera	Colombo	Kongahawatta	Rs. 200/-	Rs. 4/-
462	9	Mortgage	Saidewatte	Udanuwara Urlaldeni Korallalage Thomas Reginald Perera	Karagallege Simon Perera	Colombo	Siyabalagaha- watta	Rs. 200/-	Rs. 3/-
463	<u>Octo- ber</u> 17	Transfer	Saidewatte	Francis Pieris Suriyapperuma	Welikada Appuhamyage Dona Sophia Sujatha Lena Welikada	Colombo	Attalagaha Deniyakumbura	Rs. 150/-	Rs. 4/-
464	30	Mortgage	Saidewatte	Udunuwara Uraldeni Korallalage Reginald Perera	Karagallage Simon Perera	Colombo	Siyabalagaha- watta	Rs. 400/-	Rs. 5/-
465	<u>Novem- ber</u> 2	Transfer	Saidewatte	John Nihal Daniel	Gunaratne Wickremasinghe	Kandy	Lunugalla Kella	Rs. 6000/-	Rs. 105/-
466	17	Mortgage	Saidewatte	Udunuwara Uraldeniya Thomas Reginald Perera	Karagallage Simon Perera	Colombo	Siyabalagaha- watta	Rs. 600/-	Rs. 10/-
467	17	Transfer	Peliyagoda	Kurukulasooriyage Ranso Perera	Wijetunga Leanora Asseline Zoyza	Colombo	Nitulgaha- watta	Rs. 1000/-	Rs. 15/-
468	<u>1951</u> <u>June</u> 1	Gift	Sedawatta	Don Paulus Lewanagama	Malawachi Kankanamalage Jayasinghe	Colombo	Kiripella- gahawatte	Rs. 5000/-	Rs. 79/-
469	1	Lease	Do.	Kaluaratchige Charlotte Nona	Alahakone Aratchige Dharmadasa	Colombo	Ketakella- gahawatta	Rs. 480/-	Rs. 14/-
470	1	Assignment of Bond	Do.	Galahetiyage James Perera	Hingurala Wedakaraaratchige Andy Perera	Colombo	Premises Nos. 22 & 25, Sedawatta.	Rs. 740/-	Rs. 10/-
471	2	Deed of Declaration	Peliyagoda	1. Weligamage Maria Dias 2. Weligamage Peduru Dias	Weligamage Carolis Dias	Colombo	Nitulgaha- watte	Nil	Rs. 10/-
472	3	Mortgage	Sedawatta	Hapuaratchige Anthony Perera	Anduwattege John de Silve	Colombo	Godamanal- watta	Rs. 220/-	Rs. 3/-
473	3	Gift	Sedawatta	Hapuaratchige Anthony Perera	1. Hapuaratchige Juliet Perera 2. Do. Nicholas Perera	Colombo	Thelumbug- ahawatte	Rs. 500/-	Rs. 10/-
474	4	Last Will & Testament	Colombo	-	-	-	-	-	-
475	5	Transfer	Colombo	Senarathanthirige Don Daniel Appuhamy	Weerasinghe Aratchige Elaris Perera Jayatilleke	Colombo	Maragaha- watta	Rs. 100/-	Rs. 2/-
476	25	Agreement	Saidewatte	Hanwellage Don John	Naullage Sarnelis Silva	Colombo	Kelagahawatta alias Bogahawatta	Rs. 300/-	Rs. 10/-
477	<u>July</u> 1	Mortgage	Do.	Kalutugamudalige Dona Isabella Haney	Kulatunga Mudaliga Dharmadasa	Colombo	Madatiyaga- hawatta	Rs. 200/-	Rs. 3/-
478	7	Transfer	Colombo	1. Dangederagamage Allen Verapperuma 2. Vithanaaratchige Jayasinghe 3. Do. Sugathadsa do Soma do.	Vithana Aratchige Jinadasa	Galle	Pahalakelle- kumbura	Rs. 750/-	Rs. 15/-

I certify that the above is a true Extract from my Register of Deeds.

Register of  
Deeds of  
D.A.J.  
Tudugalla.

1st January,  
1950 to  
February 1954  
- continued

No.	Date	Nature of Instrument	Place of Execution	Grantor	Grantee	District of Registration	Name of Land	Consideration	Stamps on Duplicate	Register of Deeds of D.A.J. Tudugalle.
479	July 17	Lease	Nugegoda	Welikadage Clarice Margaret Tudugala	Nellinathar Vama Thaver	Colombo	No.14 Ekana-yake Avenue Nugegoda.	Rs. 50/-	Rs.26/-	1st January, 1950 to February 1954
480	17	Lease	Do.	-	-	-	-	-	-	- continued.
481	22	Lease	Colombo	Kodikarage Don Richard Samaranayaka	Ahamed Kutmi Ibrahim	Do.	No.12 of do.	Rs. 50/-	Rs.30/-	-
482	23	Mortgage	Sedawatte	Naullage Simon Silva	Hirimuragamage Pessoma Perera	Do.	Ambagahawatta	Rs.360/-	Rs.18/-	-
483	August 15	Mortgage	Do.	1.Athauda Aratchige Mango Piger Jayawardena 2.Korallage Don Richard	Ranasinghe Aratchige Simon Perera Kodikarage Don Sinion Appuhamy	Do. Do.	Embiligahawatta Lot A of Peniya-Godellawatte	Rs.500/- Rs.750/-	Rs.6.50 Rs.10/-	-
484	15	Transfer	Do.	Don Manuelge Don Thomas	Don Manuelge Don Somapala	Do.	Lot A of Egodawatte	Rs.500/-	Rs.10/-	-
485	September 19	Gift	Do.	1.Kankanige Stephen Perera 2.Arambawattage Elias Rodrigo 3. Do. Pieris do. 4. Do. Levanis do.	1.Arambawattage Asseline Rodrigo 2.Aratchige Don Sedris Appuhamy	Do. Do.	Lot B of Ambagahawatta Ambagahawatta	Rs.250/-	Rs. 6/-	-
486	19	Gift	Do.	Waraherage Seelawathie Perera	Jayasuriya Don William	Do.	Pelangahawatta	Rs.200/-	Rs. 4/-	-
487	November 11	Gift	Do.	Jayasuriyage Don Simon Appuhamy	1.Jayasuriyage Don Jaseline Cyril Jayasuriya 2. Do. Dona Jayawathie Malika Jayasuriya 3. Do. Don Sirisena 4. Do. Don William Tillekeratne Jayasuriya	Do.	Menikgarendenyagahawatte	Rs.2000/-	Rs.63/-	-
488	13	Gift	Do.	Jayasuriyage Don William	1.Jayasuriya Don Justin Cyril Jayasuriya 2. Do. Don Justin Dayananada do. (Delgahawatte) 3. Do. Dona Jayawathie Malika do.		Delgahawatte	Rs.2000/-	Rs.68/-	-
489	December 12	Transfer	Do.	Pathberiyage Don Cornelis Appuhamy	1.Don Philip Benjamin Wanigasuriya 2.Grace Harriet Wanigasuriya	Colombo	Minuwaniriwella	Rs. 500/-	Rs.10/-	-
490	12	Transfer	Do.	1.Don Philip Benjamin Wanigasuriya 2.Grace Harriet Wanigasuriya	Patherige Don Cornelis Appuhamy	Do.	Lot C2 of Wanapatha mukalana	Rs. 500/-	Rs.10/-	-

I certify that the above is a true Extract from my Register of Deeds  
Sgd: D.A.J.Tudugalla, Notary Public  
2nd July 1956.

No.	Date	Nature of Instrument	Place of Execution	Grantor	Grantee	District of Registration	Name of Land	Consideration	Stamps on Duplicate	Register of Deeds of D.A.J. Tudugalle.
	<u>1952</u>									
	<u>January</u>									
491	4	Transfer	Sedawatte	Weragodage Podinona	Kondagamage Marshal Grero	Colombo	Madatiyagahawatta	Rs. 100/-	Rs. 2/-	1st January, 1950 to February 1954 - continued.
492	20	Mortgage	Do.	Wanigasuriyage Don Frederick	Ramasamy Aratchige Ranoo Perera	Do.	Ambagahawatta	Rs. 250/-	Rs. 4/-	
493	26	Agreement	Do.	1.Samson Petrick Salgadoe 2.Eustace Reginald do. 3.Anthony Salgadoe 4.Agnes Maria do. 5.Rita Mercia do. 6.Juliet Salgadoe.	Patherige Don Stephen	Do.	Etambagahawatta	Rs.7500/-	Rs.10/-	
494	31	Gift	Colombo	Handapangoda Gamaralage Don Charles Jayawardena	1.Handapangoda Gamaralalage Don Ananda Jayawardena 2. Do. Do. Dona Hilda Jayawardena	Do.	Halgahawatta	Rs. 250/-	Rs. 9/-	
	<u>February</u>									
495	4	Gift	Do.	Moderia Maria Fernando	Mewanæ Ranaweera Raturatchige Peiris	Do.	Ketawatta	Rs. 500/-	Rs.10/-	
496	9	Mortgage	Sedawatta	1.Hirimurigamage Pesona Peiris 2.Kekulawela Aratchige Peduru Jayawardena	Siriwardena Wickremage Dona Caroline Nona	Do.	Telgaswatta	Rs.1000/-	Rs.10/-	
	<u>March</u>									
497	4	Gift	Do.	Pitiyage John Perera	Pitiyage Daniel Perera	Do.	Siyambala Gaswattee	Rs.1000/-	Rs.15/-	
498	15	Gift	Do.	Gardiya Kankanamlage Alias Kan-Kaniyage Gregoris Perera	Kankanige Joseph Perera	Do.	Premises No. 104 Church St. Colombo	Rs.7000/-	Rs.245/-	
	<u>May</u>									
499	1	Transfer	Do.	1.Anthony Salgadoe 2.Agnes Maria Salgadoe	Pathirege Don Stephen	Do.	Etambagahawatte	Rs.3750/-	Rs.62/-	
500	15	Gift	Do.	Gamalathge Alice Perera	Gallege William Fernando	Do.	Ambagahawatte	Rs. 100/-	Rs. 3/-	
501	18	Transfer	Do.	Kalutantrige Belanis Perera	Kalutantrige Anna Perera	Do.	Jambugahawatta	Rs.2500/-	Rs.39/-	
	<u>July</u>									
502	6	Gift	Do.	Ranasinghe Weerakkodige Podisinghe Appuhamy	Ranasinghe Weerakkodige Premawathie	Do.	Ambagahawatta	Rs. 500/-	Rs.10/-	
503	24	Transfer	Do.	1.Samson Patrick Salgadoe 2.Eustace Reginald Salgadoe	Pathirage Don Stephen	Do.	Etambagahawatta	Rs.1450/-	Rs.23/-	
	<u>August</u>									
504	5	Transfer	Do.	1.Bogahawattege Maria Silva 2.Agnes Senapathy 3.Alfred Stephen Senapathy	William Andrew Senapathy	Do.	Bogahawatte	Rs. 100/-	Rs. 2/-	
505	31	Gift	Do.	1.Waragherage Seelawathie Perera 2.Jayasuriyage Don William	Jayasuriyage Don Wijemana Siri Lal Jayasuriya	Do.	Pelagahawatta alias Pelangahakanatta	Rs. 200/-	Rs, 4/-	

I certify that the above is a true Extract from my Register of Deeds:  
Sgd: D.A.J.Tudugalla, N.P.  
2.7.1956.

No.	Date	Nature of Instrument	Place of Execution	Grantor	Grantee	District of Registration	Name of Land	Consideration	Stamps on Duplicate	Register of Deeds of D.A.J. Tudugalla.
	<u>September</u>									
506	2	Transfer	Sedawatta	Talagasthewegey Agnes Wickremasinghe	Pathirage Don Stephen	Colombo	Thelewaden-iyawa	Rs.7000/-	Rs.110/-	1st January, 1950 to February, 1954 - continued.
507	6	Transfer	Rajagiriya	Walter Raju Chamugan	Welatantri Gurunanselage Sirisena Welaratne	Do.	Gonamaditiya Kumbura	Rs.7500/-	Rs.121/-	
508	6	Mortgage	Saidewatte	Welatantiri Gurunansalage Piyasena Welaratne	Welatantri Gurunansalage Sirisena Welaratne	Do.	Do.	Rs.3500/-	Rs. 32/-	
	<u>November</u>									
509	3	Mortgage	Do.	Balasuriya Dharmadasa Mathumagalakankanamalage	Jayasuriyage Don Martin	Do.	Kongahawatta	Rs.1500/-	Rs. 14/-	
510	3	Lease	Do.	Thamis Alwis	Newenhelage Simon Perera	Do.	Gorakagahawatta	Rs. 80/-	Rs. 3/-	
511	7	Transfer	Sedawatta	1.Vintura Aratchige Lewis Silva 2. Do. Do. Hemachmadra Silva 3. Do. Do. Hemasiri Do. 4. Do. Do. Gunadasa Do. 5. Do. Do. Kalyanawathie Do. 6. Do. Do. Sumanawathie Do. 7. Do. Do. Dayananda Do. 8. Do. Do. Hemapala Do.	Panangalla Aratchige John Perera	Do.	Waluwawatte	Rs.4000/-	Rs. 66/-	
512	20	Do.	Do.	1.Don Philip Benjamin Wanigasuriya 2.Grace Harriet Wanigasuriya	Mahawattege Kirinelis Singho	Do.	Wanapathu-Kulana	Rs.1000/-	Rs. 16/-	
	<u>December</u>									
513	8	Lease	Do.	Mahagamage William Perera	Nagappa Pillai Krishna Sami Pillai	Do.	Kottagahawatta	Rs. 240/-	Rs. 26/-	
514	14	Transfer	Do.	Jayasuriyage Don Simon Appuhamy	Jayasuriya Don William	Do.	Madanwella & Pillawa	Rs.1000/-	Rs. 19/-	
	<u>1953 March</u>									
515	14	Transfer	Do.	1.Adambarage Adeline de Alwis 2. Do. Siyadoris do. 3. Do. Kamalawathie do. 4. Do. Kumarahenalage Allan de Alwis	Kumarahenalage Charles de Silva	Do.	Ambagahwatte alias Sekugegahwatte	Rs.5000/-	Rs. 80/-	
516	22	Lease	Do.	Sarasinghege Don Silvestri Silva	Jayaweera Aratchige James de Silva	Do.	Ambagahawatte	Rs. 125/-	Rs. 14/-	
517	<u>April</u> 17	Mortgage	Do.	Pathirage Caroline Perera	Ranasinghe Aratchige Simeon Perera	Do.	Kottagahawatta	Rs. 200/-	Rs. 3/-	
518	<u>May</u> 1	Mortgage	Do.	Randene Aratchige Don Paulu Winifred Fernando	Polwattege Irene Patricia Perera	Do.	Bogahawatta	Rs. 800/-	Rs.110/-	
519	5	Mortgage	Do.	Bulathsinalage Marthelis Cooray	Nauillage Isabella Hamey	Do.	Kajjugahawatta	Rs. 300/-	Rs. 4/-	
520	<u>June</u> 19	Transfer	Do.	Sembuge Dona Juliet Salgadoe	Patherige Don Stephen	Do.	Etambagahawatte	Rs.2500/-	Rs. 29/-	

I certify that the above is a true Extract from my Register of deeds.

Sgd: D.A.J.Tudugalla, Notary Public.  
Colombo, 2nd July, 1956.

No.	Date	Nature of Instrument	Place of Execution	Grantor	Grantee	District of Registration	Name of Land	Consideration	Stamps on Duplicate
521	July 12	Gift	Sedawatta	Gardiye Polwattege Deonis Perera	1. Gardiye Polwattege Lillian Milicient Perera, 2. Madanwela Liyanage Osborne Cecil Siriwardena	Colombo	Lots: b, c, d, of Bogahawatta	Rs. 5000/-	Rs. 175/-
522	August 1	Gift	Do.	Hettige Dona Albina Sumanawathie Haminey	1. Liyanage Lilawathie Malika Perera 2. Don Hector Dickson Ganegoda	Do.	Kongahawatta	Rs. 2500/-	Rs. 39/-
523	3	Transfer	Do.	Kumarahenalage Margaret de Silva	Kumarahenalage Charlotte de Silva	Do.	Ambagahawatta	Rs. 500/-	Rs. 10/-
524	September 7	Gift	Do.	Mahawattege Don Cornelis Appuhamy	Mahawattage Dona Magaline Nona	Do.	Alpiyansawatta	Rs. 200/-	Rs. 4/-
525	20	Gift	Do.	Dolawatte Appuhamilage Elisa Haminey	1. Rajapaksa Patherinhelage Don Hendrick Singho 2. Do. Elmo Nono	Do.	Helbanukadde watta	Rs. 500/-	Rs. 10/-
526	October 16	Transfer	Weliwatta	Patherige Arthur Perera	Juliet Wanigaratna	Do.	Delgahawatta Lot 5.	Rs. 8000/-	Rs. 136/-
527	16	Agreement to Re-transfer	Do.	1. Patherige Arthur Perera 2. Juliet Wanigaratne	1. Patherige Arthur Perera 2. Juliet Wanigaratne	Do.	Delgahawatta Lot 5F.	Rs. 8000/-	Rs. 136/-
528	21	Gift	Sedawatte	Wanigasuriyage Don Fedrick	Widana Aratchige Don Wilbert	Do.	Ambagahawatta	Rs. 1000/-	Rs. 15/-
529	December 8	Transfer	Do.	1. Ranasinghe Aratchige Marthelis Perera 2. Do. Do. Annie Perera 3. Do. Do. Theresa Perera	1. Kotikalage Benedict Perera 2. Kalutara Aratchige Dona Roseline Nona.	Do.	Lanciawatte	Rs. 1500/-	Rs. 23/-
530	10	Lease	Do.	Mahagamage Abraham Perera	Ranasinghe Weerakkodige Podi Singho	Do.	High Land and Field	Rs. 140/-	Rs. 4/-
531	19	Transfer	Colombo	Rita Mercia Salgadoe	Patherige Don Stephen	Do.	Etambagahawatte	Rs. 1875/-	Rs. 31/-
532	January 10	Lease	Sedawatta	Mahagamage Abraham Perera	Ranasinghe Aratchige Ransa Perera	Do.	Kottagahawatte	Rs. 420/-	Rs. 10/-
533	27	Mortgage	Do.	Wanigasuriyage Don Davith Appuhamy	Ranasinghe Aratchige Sedris Perera	Do.	Ketakalagahawatta	Rs. 350/-	Rs. 5/-
534	February 13	Transfer	Do.	Don Charles Wijegunawardena	Dassanayakege Podi Appuhamy	Do.	Weragodawatta	Rs. 1000/-	Rs. 15/-
535	13	Agreement	Do.	1. Don Charles Wijegunawardena 2. Dassanayakege Podi Appuhamy	1. Don Charles Wijegunawardena 2. Dassanayakege Podi Appuhamy	Do.	Weragodawatte	Rs. 1000/-	Rs. 15/-

Register of Deeds of D.A.J. Tudugalla.

1st January, 1950 to February 1954 - continued.

I certify that the foregoing is a true Extract from my Register of Deed.

Sgd: D.A.J. Tudugalla, Notary Public,  
Colombo, 2nd July, 1956.

R.23. - ENTRY BY S.I.JOACHIM

R.23.

R.23 in P.19 V.H's DiaryExhibits

R.23.

Entry by  
S.I.Joachim.28th February,  
1954.

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At 1.55 p.m. V.H. 548 Kaldemulla is present at home "Nancy Villa" Kaldemulla. There is a dispute over the car of the deceased which is locked up in this Garage. According to Mrs.J.F.L. de Silva of Colombo she states the car in question is now hers as she has the last Will of the deceased. Mr. Austin Peiris and his wife Dulcie Peiris are the other parties concerned. Mr. Bertram Fernando, Proctor is also present. An attempt is being made to bring about a settlement.

Sgd: A.W.Perera

R.24. - LETTER FROM JOHN APPUHAMY TO DE SILVA & MENDIS

R.24.

R.24.

207/8 Kaldemulla,  
Moratuwa.  
1st April, 1954.

Letter from  
John Appuhamy  
to De Silva  
and Mendis.

1st April,  
1954.

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Messrs.De Silva & Mendis,  
Proctors & Notaries,  
Imperial Bank Buildings,  
Colombo.

Sirs,

I understand you are the Proctors for the Executrix Mrs.M.A.de Silva in the matter of the Estate of the late Mr.S.William Fernando of Kaldemulla Moratuwa.

I have been the driver to the late Mr. S. William Fernando for the last 22 years.

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On the evening of the 23rd February 1954 Mrs. de Silva x x (torn) from me the switch key of my late master's car and thereafter I x x (torn) been continued in my employment nor been paid by arrears of wages.

Moreover I had been promised a sum of Rs.3000/- by my master which wish he might have intimated to Mrs.de Silva his daughter x x (torn) others.

Therefore considering my period of service under the late Mr.S.William Fernando, I shall thank you to advise your client to pay me.

Exhibits

R.24.

Letter from  
John Appuhamy  
to De Silva  
& Mendis.

1st April,  
1954  
- continued.

- (a) arrears of wages amounting to Rs.120/-.  
(b) Wages in lieu of notice, and  
(c) the promised sum of Rs.3,000/-

Yours obediently,

Sgd: G. John Appuhamy  
(In Sinhalese)

(G. John Appuhamy)

R.25.

Letter from  
John Appuhamy  
to De Silva  
& Mendis.

6th May, 1954.

R.25. - LETTER FROM JOHN APPUHAMY TO DE SILVA  
& MENDIS.

R.25.

207/8, Kaldemulla,  
Moratuwa,  
6th May, 1954.

10

Messrs. De Silva & Mendis,  
Proctors & Notaries Public,  
P.O. Box 884, Colombo.

Your Ref. No. D/145

The late Mr. S.W. Fernando

Dear Sirs

In reply to your letter of the 26th ultimo, I have the honour to state that the statement contained in paragraph 2 of your letter is entirely incorrect. 20

I must categorically deny that I informed your client that I had got a job elsewhere or that I left voluntarily. It is inconceivable that I an employee who has served my master faithfully for 22 years would have thought of leaving the service of my late master's daughter or of my late master's daughter being satisfied with my refusal to give her a receipt when she had paid my salary. I wonder on what date that was.

Further the sum of Rs.3,000/- the payment of which apart from being a legal claim is a moral obligation on the part of my late master's daughter who is inheriting so much from him. 30

Yours obediently,

Sgd: G. John Appuhamy  
(In Sinhalese)

R.26. - LETTER FROM JOHN APPUHAMY TO DE SILVA  
& MENDIS

Exhibits

R.26.

D/145.

R.26.

26th April, 1954

Letter from  
John Appuhamy  
to De Silva  
& Mendis.

26th April,  
1954.

G. John Appuhamy, Esq.,  
207/8, Kaldemulla,  
Moratuwa.

Dear Sir, The late Mr. S.W. Fernando

10 In reply to your letter of the 1st instant,  
we are acting for Mrs. J.F.L. de Silva who is the  
Executrix of her deceased father's Will.

We are instructed that shortly after the late  
Mr. Fernando's death you informed our client that  
you had got a job elsewhere and that you were  
leaving. You then voluntarily left our client's  
services after receiving the salary which was due  
to you for which you refused to give our client a  
receipt.

20 With regard to the sum of Rs.3,000/- which  
you claim, our client is the Executrix of her  
late father's Will and she can only make payment  
of those claims which are legally payable by the  
estate.

Yours faithfully,

Sd:

for De Silva and Mendis.

R.30. - DEED BY S.W.FERNANDO NO.605.

R.30.

No.605.

R.30.

Deed by S.W.  
Fernando.  
No.605.

30 TO ALL TO WHOM THESE PRESENTS SHALL COME, SELLAPP-  
ERUMAGE WILLIAM FERNANDO of Kaldemulla in Moratuwa  
(hereinafter sometimes referred to as "the Donor")

SENDS GREETINGS :-

WHEREAS under and by virtue of Deed No.491  
dated the 22nd day of November, 1951 attested by  
Felix C.A.de Silva of Colombo, Notary Public the  
Donor is seised and possessed of and otherwise  
well and sufficiently entitled to all that the  
house and premises bearing Assessment No.27/3 situ-  
ated at Melbourne Avenue within the Municipality



Exhibits

R.30.

Deed by S.W.  
Fernando  
No.605

- continued.

and District of Colombo (in the Schedule hereto fully described and hereinafter sometimes called "the said premises")

AND WHEREAS the Donor is desirous in consideration of the love and affection which he bears unto his daughter MILLIE AGNES DE SILVA of "Sriniketha" 27/3 Melbourne Avenue, Colombo (hereinafter sometimes referred to as "the Donee") of conveying to the Donee by way of Gift absolute and irrevocable the said premises free from encumbrances.

10

NOW KNOW YE AND THESE PRESENTS WITNESS that for the consideration aforesaid and for divers good causes and considerations him thereunto moving the said Sellapperumage William Fernando doth hereby grant convey assign transfer set over and assure unto the said Millie Agnes de Silva her heirs executors administrators and assigns by way of Gifts absolute and irrevocable all that the said house and premises bearing Assessment No.23/7 Melbourne Avenue in the Schedule hereto fully described together in particular with a right of way and passage for both cart and foot traffic in and over the twenty feet road reservation (in the schedule hereto fully described) and all singular the rights ways easements servitudes and appurtenances whatsoever to the said premises belonging or in anywise appertaining or held to belong or be appurtenant thereto or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate right title interest property claim and demand whatsoever of the Donor of in to upon or out of the said premises and every part thereof

20

30

TO HAVE AND TO HOLD the said premises in the Schedule hereto fully described hereby conveyed and assigned or expressed or intended so to be with all and singular the appurtenances thereunto belonging and in particular together with a right of way and passage for both cart and foot traffic in and over the said road reservation of the value of Rupees One hundred and eighteen thousand (Rs.118,000/-) of lawful money of Ceylon unto the Donee and her aforewritten absolutely for ever

40

AND the Donor doth hereby for himself his heirs executors and administrators covenant and agree with the Donee and her aforewritten that the Donee and her aforewritten shall and may at all times hereafter peaceably and quietly possess and enjoy the said premises hereby conveyed and assigned or expressed or intended so to be and receive

the rents and profits thereof without any interruption or disturbance whatsoever by the Donor or his aforewritten and that the said premises are free from encumbrances and that the Donor and his aforewritten shall and will at all times hereafter warrant and defend the title to the same and every part or portion thereof and further that the Donor and his aforewritten shall and will at all times hereafter at the request and cost and expense of the Donee and her aforewritten do and execute or cause to be done and executed all such further acts deeds assurances and things as shall or may be reasonably required for more perfectly and effectually conveying and assuring the said premises unto the Donee and her aforewritten.

AND the said Millie Agnes de Silva doth hereby thankfully accept the said Gift.

IN WITNESS whereof the said Sellapperumage William Fernando and the said Millie Agnes de Silva have set their respective hands to these Presents and to two others of the same tenor and date at Kaldemulla Moratuwa on this Sixteenth day of January One thousand nine hundred and fifty three

THE SCHEDULE ABOVE REFERRED TO

All that and those the house and premises bearing Assessment No.27/3 Melbourne Avenue comprising Lot 8 in Survey Plan No.3356 dated February 1930 made by H.G.Dias Surveyor bearing Municipal Assessment No.385,386 situated at Wellawatta

40A  
within the Municipality and District of Colombo Western Province which said Lot 8 is a divided portion of the within mentioned entire premises also bearing Municipal Assessment Nos.385/40A and 386/40A situated at Wellawatta within the Municipality and District of Colombo Western Province and which said Lot 8 is according to the situation and description thereof as contained in the said Plan No. 3356 bounded on the North by Lot 7 (being a partitioned portion of the entire land) on the East by Lot 5 (being a partitioned portion of the entire land called and known as "Melbourne House" on the South by the properties belonging to the heirs of William Dias, John de Krester, M.Ismail, E. de Livera Mudaliyar and others and on the West by the Road Reservation 20 feet wide and containing in extent thirty one perches and eighty eight one hundredth of a perch (AO. RO. P.31.88) together with the full free and absolute right and liberty of

Exhibits

R.30.

Deed by S.W.  
Fernando  
No.605

- continued.

Exhibits

R.30.

Deed by S.W.  
Fernando  
No.605

- continued.

way and passage unto the said Donee and her afore-  
written as well as the owner or owners of the said  
Lot 8 in the said Plan for the time being and her  
or their respective servants or agents and all  
other persons with her or their permission in com-  
mon nevertheless with all other persons having  
like right at all times hereafter by night or day  
and with or without horses cattle or other animals  
carts carriages motors or other vehicles of any  
description for all purposes whatsoever connected  
with the use and enjoyment of the said Lot 8 in the  
said Plan (howsoever used or occupied) to pass and  
repass along over and upon the said 20 feet road  
reservation (which forms the Western boundary of  
the said Lot 8 according to the said Plan No.3356)  
and the 30 feet road reservation (which forms the  
Northern boundary of the entire land divided or  
partitioned according to the said Plan No.3356)  
from the said Lot 8 to the Sea shore and from the  
Sea shore to the said Lot 8 as well as from the  
said Lot 8 to the Colombo Galle Road and from  
Colombo Galle Road to the said Lot 8 without any  
let or hindrance by the Donor or his aforewritten  
or by any other person or persons whomsoever.

10

20

Witnesses -

WE do hereby declare that }  
we are well acquainted with }  
the executants and know }  
their proper names occupa- }  
tions and residences }

Sgd:  
S.William Fernando  
(In Sinhalese)

30

Sgd: Illegibly

Sgd: K.M.G.Henry.

Sgd: M.A. de Silva

Sgd: P.E.S.Wijeyesekera  
Notary Public.

I, Placidus Edwin Samson Wijeyesekera of Moratuwa  
in the Island of Ceylon Notary Public do hereby  
certify and attest that the foregoing Instrument  
etc. x x

And I further certify and attest that the Original  
etc., x x

Sgd: P.E.S.Wijeyesekera  
Notary Public.

40

Date of Attestation -

16th January, 1953.

SEAL.

R.31. - DEED BY S.W.FERNANDO NO.3016Exhibits

No.3016.

R.31.

R.31.

Deed by S.W.  
Fernando  
No.3016.25th July,  
1952.

KNOW ALL MEN BY THESE PRESENTS that I, Sellaperumage William Fernando of Kaldemulla in Moratuwa (hereinafter called the Vendor) for and in consideration of the sum of Rupees Twenty eight thousand (Rs.28,000/-) of lawful money paid to me by Pelawa Hatthhawagedera Somasundera of Pelwa in Yatinuwara, Gangalapalatha in the District of Kandy Central Province and Pelawa Haththawagedera Arthur Allis of Pelawa, presently of Yatawatta in Asgiri Pallesiya Pattu of Matale South in the District of Matale Central Province (hereinafter called the Vendees) (the receipt whereof is hereby acknowledged) do hereby sell assign set over and assign unto the said Vendees and their heirs Executors Administrators and assigns the premises in the Schedule hereto more fully described together with all rights privileges, easements, servitudes and appurtenances whatsoever thereof or thereunto in any wise belonging or used or enjoyed therewith or reputed or known as part or parcel thereof and all the estate right title interest claim and demand whatsoever of me the said Vendor in, to out, of or upon the same which said premises have been held and possessed by virtue of Deed of Transfer No.1474 dated 26th September, 1929 and attested by J.P. Rodrigo, Notary Public, Colombo.

TO HAVE AND TO HOLD the said premises with their and every of their appurtenances unto them the said Vendees and their aforesaid for ever, And I, the said Vendor for myself and my heirs executors administrators covenant with the said Vendees and their aforesaid that the said premises are free from every encumbrance whatsoever and that I shall always warrant and defend my title to the same unto Vendees and their aforesaid against all and every other person or persons whomsoever

THE SCHEDULE ABOVE REFERRED TO

1. An allotment of land called Nawagala Mukalana situate in the village of Yatawatta in Asgiri Pallesiya pattu of Matale south in the District of Matale Central Province and bounded on the West by land described in Plan No.62434 and on all other sides by land claimed by natives containing in extent Forty nine acres and one rood (49A.1R.OP).
2. An allotment of land called Boraluwehena situate at Uralawatta in Pallesiya pattu aforesaid,

Exhibits

R.31.

Deed by S.W.  
Fernando  
No.3016.

25th July,  
1952

- continued.

bounded on the East and West by the limit of the chena of Karagahalandedegera Punchi Menike and the limit of chena Palliyagedera Ukku Menika and South and North by the limit of Nawagala Watte containing in extent two acres three roods and two perches (2A.3R.2P).

3. All that allotment of land called Embillewel-pitiyehena situated in the village called Karagahalande in Yatawatte aforesaid bounded on the North by chena lands belonging to Herat Mudiyanse-lagedera Appuhamy Astrologer and others on the South by Chena of Gamagedara Kapurala on the East by Chena land of Dombawalagedera Dingiri Banda and on the West by Chena land of Bibilegedara Appurala and containing in extent two roods and twenty nine perches (0A.2R.29P).

10

4. An undivided one sixth share of the land called Siyambalagallande Hena situated at Karagahalande, aforesaid bounded on the North by Nawagalla Coffee Estate on the South by the chena of Dombawelagedera Dingiri Banda on the East by the Chena of MR.Gerard Wijekoon Muhandiram and on the West by the Chena of Mudiyanse-lagedera Appuhamy Nekatrala Punchirala Vedarala and Kiri Banda Ratamahatmaya, containing in extent One acre one rood and eleven perches (1A.1R.11P).

20

5. An undivided half share of the land called Katuwetiyehena situated at Karagahalande Uralawatta in Pallesiyapattu aforesaid bounded on the East by limit of Pihillagederahena on the South by the fence of Ekanayakegederahena on the West by fence of Dombawelagederahena and on the North by canal containing in extent about three acres (A3.R0.PO).

30

6. An undivided half share of the soil and of the fruit trees of the land called Katuwetiya hena situated at Uralewatte aforesaid bounded on the East by the limit of Gamagederahena on the South by Canal on the West by Road leading to Nawagala-watte and on the North by Canal containing in extent one acre and two roods (A1.R2.PO).

40

7. All that allotment of land called Kapukotuwe-hena alias Boraluwawatta situated at Galagama in Pallesiya Pattu, aforesaid bounded on the East by road on the South by Hapugahamulahena on the West by chena of Punchi Menika and on the North by Canal, containing in extent one rood and thirty one perches (A0.R1.P31.).

8. All that allotment of land with the plantations

thereon Kambakotapuhena situated at Uralawatte aforesaid bounded on the East by the limit of the chena belonging to Tanasekeragedera South and North by the limit of the land belonging to Kaikhursoo Hormsjee and on the West by land belonging to the same person and limit of the land also belonging to Kiri Banda Aratchila, containing in extent half an acre more or less.

Exhibits

R.31.

Deed by S.W.  
Fernando  
No.3016.

25th July,  
1952

- continued.

10 9. The land called Nawagalla Hapugahamulawatte with the plantations thereon situated at Uralawatta, aforesaid bounded on the East, South, West and North by the boundary of the land of Mr. Kaikushoo Horumsjee containing in extent Two roods and Nineteen perches (A0.R2.P19).

20 10. An undivided half share of the land called Hapugahamulahena situated at Uralawatte aforesaid bounded on the East by limit of Kapukotuwa on the South by the limit of Viharehena on the West by the limit of Kehelwatte and on the North by the limit of the chena belonging to Punchi Menika containing in extent One acre (A1.R0.P0) more or less.

30 11. An undivided one sixth share of the land called Boraluwekehelwattchena situated at Karagahalande aforesaid bounded on the North by the Chena of Ihalagedera Dingiri Amma on the South by the chena of Ekanackgedera Punchirala and Wattedgedera Appuhamy on the East by the chena of Dombawelagedera Kiri Banda and Dingiri Banda and on the West by Nawagalla Coffee Estate containing in extent One acre and five perches (A1.OR.P5)

40 12. All that land called Karakolagahamudunchena situated at Karagahalande in Pallesiya Pattu aforesaid bounded on the North by lands belonging to Gerad Wijeyekoon Muhandiram Gamagedera Appuhamy Dingirala Kawrala Mudiyanse Punchi Appuhamy Dingiri Banda, Kiri Banda Pihillagedera Kiri Menika and Ratnaiakegedera Kiri Banda Aratchi on the South by lands belonging to Vedasuriya Mudiyanse, Ranmenika, Ratnaike Mudiyanse Ukku Banda Aratchi and Kiri Banda on the East by Chena land belonging to Nuwaragedera Kiri Banda on the West by Nawagalla Coffee Estate in extent Nine acres and two perches (A9.R0.P2).

50 13. All that land called Karakolagahamudunchena situated at Uralawatte aforesaid bounded on the East by Ecknakgederahena on the South by Mohottigedera hena on the West by the limit of the garden belonging to Mr. Kaikusroo Hormusjee and on the North by the limit of Eckanekgedera hena containing in extent Three acres (A3.R0.P0).

Exhibits

R.31.

Deed by S.W.  
Fernando  
No.3016.25th July,  
1952

- continued.

14. All that land called Mohottigedera hena situated at Uralawatte aforesaid bounded on the East and South by the Chena land belonging to Ratnaike Mudiyansele Ukku Banda Aratchila on the West by the chena land belonging to Mohottigedera Kiri Menika and on the North by the chena land belonging to Vedasundera Mudiyansele Ranmenika containing in extent One acre one rood and twenty perches (A1.R1.P20).

15. An undivided half share of Karakolagaha Mudunehena towards the Western direction situated at Alakolange in Asgiri Udasiya pattu aforesaid bounded on the East by the limit of Kalumenikege hena on the South by the limit of Paslande Aratchilage hena on the West by the limit of the garden belonging to Mr. Kaitusroo Hormusjee and on the North by the limit of Ranmenikage hena containing in extent Three acres (A3.RO.PO). more or less.

10

16. All that undivided half share of the land called Kande Aramba situated at Karagahalanda aforesaid bounded on the East by Karagahalandegedera Polgaswatte South by Boraluwehena West by Mutumenike's garden and North by Nawagalla Kopywatta containing in extent about two pelas paddy sowing.

20

17. All that allotment of land called Siyambalagaslande Hena situated at Uralawatta, aforesaid bounded on the East by Mahatmayage watta and Ela South and West by the limit of Udagederahena and North by boundary of Mahatmaya's property, containing in extent Two acres and thirty perches (A2.RO.P30).

30

18. All that land called Ratakola Watta Hena situated at Uralawatte aforesaid bounded on the East by Mala Ela of Ratakolawatte hena, South by Mala Ela and Punchi Menika's chena West by the live fence of the garden of Tissawagedera Punchirala and North by Polgaswattahena containing in extent Two Pelas paddy sowing.

19. An undivided half share of Galkotuwa watta situated at Uralawatte aforesaid bounded on the East by Ela of Udagedera hena and limit of Punchi Menika's chena South by Mala Ela West by Polgaswatte and North by Mala Ela containing in extent two seers kurakkan sowing.

40

20. An undivided half share of Kandegalkotuwa hena situated at Urulawatta aforesaid bounded on the East by Ela and Stone South by Ela West by the

limit of Polgaswattehena and North by Mukalanda watta and stone containing in extent three seers Kurakkan sowing.

Exhibits

R.31.

Deed by S.W.  
Fernando  
No.3016.

25th July,  
1952

- continued.

10 21. An undivided half share of Siyambalagaslandehena and Bulugahamulahena situated at Urulawatta aforesaid bounded on the East by Nuwaragedera hena and limit of Mahatmayagehena, South by Ely Mahatmaya's property West by Mahatmaya's property and Ela and North by Mahatmaya's property containing in extent two acres two roods and eighteen perches

22. All that land called Ratakola Watta situated at Urulawatta aforesaid bounded on the North by Mala Ela and on the East, South and West by the boundary of Mahatmaya's property containing in extent Two lahas paddy sowing.

20 23. All that allotment of land called Boraluwehena situated at Urulawatte aforesaid bounded on the East, South and West by the boundary of Mahatmaya's property and North by Ela, containing in extent One acre and one rood and two perches (A1.R1.P2).

30 AND which foregoing allotments of land now forming one property and called and known as Nawagalla Estate in extent Ninety nine acres and two roods (A99.R2.PO) and situated at Yatawatta in Asgiri Korale Pallesiyapattu in Matale South in the District of Matale Central Province and which property is bounded on the East by the limit of the lands belonging to villagers, Mala Ela lands belonging to Villagers and live fence, on the South by live fence Mala Ela and land belonging to villagers, West by the limit of Yatawatta Estate and on the North by Rock, together with buildings plantations and everything standing thereon and depicted in Plan No.2773 dated 24th August 1935 and made by Mr.J.Robert Holloway, Licensed Surveyor, Matale.

40 IN WITNESS whereof I have hereunto and to two others of the same tenor and date as these Presents set my hand at Matale on this 25th day of July One thousand nine hundred and fifty two

Witnesses -

SIGNED in the presence of us and }  
we declare that we are well ac- } Sgd:  
quainted with the executant and } S.William Fernando  
know his proper name occupation } (In Sinhalese)  
and residence }  
}

Sgd: M.D.Simon Perera  
Sgd: Illegibly.

Sgd: A.L.Samarasekera  
N.P.



Exhibits

R.31.

Deed by S.W.  
Fernando  
No.3016.

25th July,  
1952  
- continued.

I, Andawattege Lionel Samarasekera of Matale Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the said Sellapperumage William Fernando who has signed in Sinhalese characters, who is known to me etc.

x x x x

And I further certify and attest that

x x x x

and the consideration Rs.28,000/- hereof was paid by cheque No.C388961 dated 25th July, 1952 drawn on the Mercantile Bank Limited, Kandy, in the original etc.,

10

x x x x

Sgd: A.L.Samarasekera  
Notary Public.

Date of Attestation

25th July, 1952.

SEAL.

R.32A.

Entry in Album  
made by  
S.W.Fernando.

15th September,  
1950.

R.32A. - ENTRY IN ALBUM MADE BY S.W.FERNANDO

R.32A

TRANSLATION

My Grandson is a boy of a good family. He is now taking great pain in studying for the Doctor's examination. I pray to God that he will be successful in everything.

20

Loving Grandfather

Sgd: S.William Fernando

15.9.50.

Translated by me -

Sgd: Illegibly

S.T.D.C. Colombo.

R.33. - COMPLAINT BY MRS.M.A.DE SILVA TO POLICEExhibits

R.33.

R.33.

Extract from R.I.B. of Mount Lavinia Police  
Station.Complaint by  
Mrs.M.A. de  
Silva to  
Police.Date: 24.2.54 Time: 10.45 a.m. Page: 282 Para.  
3516.24th February,  
1954.Notes of H.Q.I. Re Dispute over death.

10 Mrs.J.F.E.de Silva, Siriniketha, Melbourne  
Avenue Colombo present and states:- The deceased  
Mr.S.William Fernando is my father. He expired on  
Monday 22.2.54. I brought the corpse to this house  
on the 22nd. As I did not allow my father's car  
to be used by Mr.A.Peiris my stepmother threatened  
to kill me, my son and the driver. She also  
threatened to burn my car and my fathers car. They  
threatened to break the garage door, and take the  
car. Austin Peiris brought a number of rowdies.  
Mr.Rosmond Peiris held out threats to my son and  
driver. I sent my son and the driver to inform  
Police. After a short while the Police arrived  
20 on the scene. If the Police did not arrive there  
would have been serious trouble. My stepmother  
threatened to break open the iron safe before the  
arrival of the Police. I was given a list of the  
articles taken by the Police. I have no objections  
to the articles taken by the Police being in their  
custody. I anticipate that there may be trouble  
later in the day, and I request that the Police be  
sent on duty. The keys of the iron safe are with  
me.

Sgd: M.A. de Silva Read over.

30 Sgd: A.F.Caldera, H.Q.I.

Certified correct -

Sgd: Illegibly  
P.C.5118.

Correct

Sgd: Illegibly.

H.Q.I. Mt. Lavinia

9th February, 1956.

ExhibitsR.35. - DEED OF TRANSFER NO.17018R.35.

R.35.

TRANSLATION

Deed of  
Transfer,  
No.17018.  
31st December  
1915

No.17018

The Deed of Transfer drawn signed and granted at Moratuwa on the Thirty first day of December in the year of our Lord One thousand nine hundred and fifteen states as follows :-

1. Baddeliyanage Don Davith of Angulana in Moratuwa in the Palle Pattu of Salpiti Korale in the District of Colombo, Western Province in the Island of Ceylon for and in consideration of the sum of Rupees Sixty (Rs.60/-) of lawful money of Ceylon have sold transferred granted set over and assigned unto Udiriappu Waduge Sara Bastiana Fernando of Kaldemulla in Moratuwa an undivided one twentieth (1/20) part or share of an allotment of land called Wetakeiyagahawatta and of the trees and plantations standing thereon situated at Angulana aforesaid bounded on the North by the land of Palaman-dadige Carolis Fernando and others on the East by the land of Baddeliyanage Don Philippu on the South by the land owned by Nando Vedarala and on the West by sea shore and containing in extent land sufficient to plant about fifty coconut plants and held and possessed by me the said Baddeliyanage Don Davith under and by virtue of Deed of Transfer No.16040 dated 6th January 1912 attested by Ponnehennedige Simon Dias, Notary Public and executed in my favour and I the said Vendor counted and received the said sum in full.

TO HAVE AND TO HOLD the said premises hereby sold and conveyed with all the rights and appurtenances unto the said Udiriappu Waduge Sara Bastiana Fernando her heirs executors administrators and assigns absolutely for ever with full power to deal with same in any manner as she or they may wish.

AND I the said Vendor do hereby for myself my heirs executors and administrators promise covenant declare and bind with and to the said Vendee and her said aforewritten that I have not heretofore made done or committed any act or deed whereby the said premises or any part thereof or income thereof may be encumbered in any manner and that I shall warrant and defend title to the said premises and that I shall and will intervene and settle disputes arising in respect of the said premises

10

20

30

40

and that I shall and will at any time hereafter at the request and cost of the said Vendee or her aforewritten do and execute all such further and other acts and deeds for more perfectly assuring the said premises unto the said Vendee and her aforewritten as by her or her aforewritten may be reasonably required.

Exhibits

R.35.

Deed of  
Transfer  
No.17018.  
31st December 1915  
- continued.

10 IN WITNESS whereof I the said Baddeliyanage Don Davith have hereunto and to two others of the same tenor and date as these presents set my signature.

WE the witnesses hereto do hereby }  
declare that we are well acquaint- } Sgd:  
ted with the Vendor who signed } Don Davith  
these presents and know his proper } (Sinhalese)  
name occupation and residence }

Sgd: Elias Fernando (In Sinhalese)

Sgd: Andiris Fernando (In Sinhalese)

Sgd: D.F.W.Karunaratne  
N.P.

20 I, Weerahennedige Davith Fernando Wickremasekera Karunaratne of Rawatawatta in Moratuwa of Colombo District in the Island of Ceylon Notary Public, do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me to the said Vendor Baddeliyanage Don Davith etc.,

x x x x

And I further certify and attest that the sum of Rupees Sixty, the within mentioned consideration was paid in my presence and that the stamp etc.

x x x x

30 Date of Attestation -  
31st December, 1915.

Sgd: D.F.W.Karunaratne  
Notary Public.

Translated by -

Sgd: Illegibly

S.T.D.C. Colombo.

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Exhibits

R.36.

Receipt by  
Mrs.C.A.Peiris.  
13th August,  
1944.

R.36. - RECEIPT BY MRS.C.A.PEIRIS.R.36.Translation

24, Alfred House Avenue,  
Colpetty.  
13th August, 1944.

Writing written and granted -

I the undersigned Mrs.C.A.Peiris of Korala-  
wella in Moratuwa do hereby acknowledge that I  
have this day received correctly in terms of per-  
mission of father the following articles which  
were in the custody of Mrs.J.F.L. de Silva of  
premises No.24, Alfred House Avenue, Colpetty:-

Two Strings of Pearls (265 pearls)  
One gold set studded with white stones  
One Pendant - Two earrings - One bangle  
One Pin - One gold set studded with  
small white stones - One hair pin  
One Necklace - One pendant - Two earrings  
One Pin - One gold set studded with blue  
stones - One pendant - One bangle -  
One hair pin - Two earrings - One pin  
One pearl pendant - Two earrings -  
One gold set studded with Ceylon stones  
One pin - One Necklace - One bangle  
Two earrings - Fifty brilliant stones.

Sgd: on a 6 cts. stamp

Sgd: C.A.Peiris (Thumb impression)

Sgd: Evelyn Fernando.

Witnesses -

Sgd: K.M.G. Henry.

Translated by -

Sgd: Illegibly

S.T.D.C. Colombo.

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R.37. - RECEIPT OF RAYMOND & CO., FOR Rs.2550/-ExhibitsR.37.

R.37.

A.F.Raymond &amp; Co.,

Raymond House, Kanatta,  
Colombo, Ceylon Branch  
Kandy Telephone 116.Receipt of  
Raymond & Co.,  
for Rs.2550/-.

14th March, 1946.

14th March,  
1946.

WE, the undersigned hereby agree to carry out the services (enumerated in the sheets annexed here-  
to marked A & B which have been duly signed by us  
for verification) at the funeral of Mr.S.William  
10 Fernando on notification of his death being duly  
given to us. It is hereby also acknowledged that  
the sum of Rupees Two thousand five hundred and  
fifty (Rs.2,550/-) has been duly paid by the said  
Mr.S.William Fernando and received by us for the  
said funeral services to be rendered at his death.

Sgd: A.F.Raymond &amp; Co.,

Sgd: Illegibly

Managing Partner.

Rs.2,550/-

20 Sgd: on a /6cts stamp

Sgd: Illegibly

Bk. of Ceylon, Colombo C.940057 14.3.46.

R.37A. - ESTIMATE FOR FUNERAL FEES

R.37A.

R.37A.Estimate for  
Funeral Fees.

S.William Fernando, Esq.,

"Nancy Villa", Kaldemulla, Moratuwa

14th March,  
1946.

14th March, 1946.

Dr -

A.F. Raymond &amp; Co.,

Members of the British Institute of Embalmers

30 Monumental Sculptors, Funeral Directors and

Florists

Kanatta Colombo

<u>Exhibits</u> R.37A. Estimate for Funeral Fees. 14th March, 1946 - continued.	March 14	To a polished casket with plated Mountings, silk Trimmings etc. Complete	Rs.750.00	
		" Embalming Remains with best American Preservatives	250.00	
		" Hire of Motor Hearse to Moratuwa	75.00	
		" Swans satin shroud	65.00	
		" Dressing remains	15.00	
		" Hire of lowering device	20.00	10
		" Personal attendance etc.	25.00	
		" Incidental expenses	<u>50.00</u>	

If hearse has to run to Matale, additional charge of Rs. 5/- per return mile.

Sgd: Illegibly

A.F.Raymond & Co.,  
Managing Partner.

R.37B.

R.37B. - ESTIMATE FOR GRAVE FEE

R.37B.

Estimate for  
Grave Fee.  
14th March,  
1946.

S.William Fernando, Esq.,  
"Nancy Villa", Kalamulla,  
Moratuwa.

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14th March, 1946.

Dr.

A.F.Raymond & Co.,  
Members of the British Institute of Embalmers  
Monumental, Sculptors, Funeral Directors and  
Florists

Kanatta, Colombo

To a fine axed Grey Granite Cross 5'0" high on 3 pedestals	Rs.475.00	
" Fine axed grey granite coping to enclose grave space 4' x 8'	350.00	30
" Letters in imperishable relief lead	75.00	
" Transport of memorial and erecting Memorial and coping on cement con- crete Foundations at Angulana	225.00	

To Paving inside of grave and filling in granite chips	Rs.125.00	<u>Exhibits</u> R.37B.
" Building underground vault for burial with concrete reinforced Top, sides cement plastered size 4' x 8'	<u>225.00</u>	Estimate for Grave Fee. 14th March, 1946
" Less special Discount .....		- continued.
A.F.Raymond & Co., Sgd: Illegibly Managing Partner.		

10 R.38. - LETTER FROM RAYMOND & CO. TO S.W.FERNANDO R.38.

A.F.Raymond & Co., R.38.  
Funeral Directors etc.,  
Colombo 8.

S.William Fernando, Esq., 22nd July, 1952  
"Nance Villa", Kaldemulla,  
Moratuwa. 22nd July, 1952.

Dear Sir,

Pre-Arranged Funeral -  
S.William Fernando

20 We thank you for your letter of the 13th instant, in connection with the above, and we are indeed very pleased to learn that you are in good health. We cannot do better than wish you all the best for your future health and happiness, until such time as it may please the One above to call you to rest.

Yours faithfully,  
A.F.Raymond & Co.,  
Sgd: Illegibly  
Joint Managing Partner.

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Exhibits

R.39.

Entry in  
Police  
Information  
Book.24th February,  
1954.R.39. - ENTRY IN POLICE INFORMATION BOOKExtract from the R.I.B. of Mt. Lavinia Police  
StationDate 24.2.54 Time: 1.30 p.m. Page: 282 Para.3516Mrs.J.F.L.de Silva "Siriniketha"Melbourne Avenue, Colombo 4, present and states:

The deceased Mr.S.William Fernando is my father. He expired on Monday 22.2.54. I brought the corpse to this house on the 22nd. As I did not allow my father's car to be used by Mr.A.Peiris, my step-mother threatened to kill me, my son and the driver. She also threatened to burn my car and my father's car. They threatened to break the garage door and take the car. Austin Peiris brought a number of rowdies. Mr.Romiel Peiris held out threats to my son and driver. I sent my son and driver to inform the Police. After a short while the Police arrived on the scene. If the Police did not arrive there would have been serious trouble. My step mother threatened to break open the iron safe, before the arrival of the Police. I was given list of the articles taken by the Police. I have no objections to the articles taken by the Police being in their custody. I anticipate that there may be trouble later in the day, and I request that the Police be sent on duty. The keys of the iron safe are with me.

Sgd: In English. Read over. Sgd:A.H.Flamer Caldera.

True extract typed by me

Sgd: Illegibly

(P.C.2840 Premaratne)

Certified correct

Sgd: Illegibly

H.Q.I.Mt.Lavinia

30.7.56.

24.2.54 - 10.45 a.m. Nance Villa, Kaldemulla

Mrs.S.William Fernando age 65 years, residing at No.37 Station Road Angulana present and states: I am the widow of S.William Fernando. He died on 22.2.54. I was married to William Fernando for the last thirty nine years. I am not aware whether my late husband made a Will. The Police took charge of one iron safe, one car No.EL-4615, one

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gold watch chain with one gold dollar, one sovereign and a half sovereign, one gold ring with a yellowish stone, one gold ring with a blue stone, one cheque book (Bank of Ceylon) bearing cheque leaves H.761190 to 761200, one silver waist chain about 12 feet long and spare wheel of car EL-4615. Of the property taken charge by Police I claim my share due to me as the lawful wife of the deceased. I have no objections to the property being in Police custody. (At this stage Mr. Peiris the son-in-law of Mrs. Fernando says that he wants to consult a lawyer and leaves the place) Mrs. Fernando does not want to state anything further. 12.10. p.m. Mr. Peiris arrives. He states that his lawyers advised him not to let his mother-in-law sign any documents.

Sgd: A.H. Flamer, Caldera.

True Extract typed by me

Sgd: Illegibly

(P.C.2840 Premaratne)

Correct

Sgd: Illegibly.

Certified correct

Sgd: Illegibly

H.Q.I.Mt. Lavinia

30.7.56.

Exhibits

R.39.

Entry in  
Police  
Information  
Book.

24th February,  
1954

- continued.

R.45. - AFFIDAVIT BY S.VETHECAN AND OTHERS  
IN TESTAMENTARY CASE NO. 14666

In the District Court of Colombo

IN THE MATTER OF THE LAST WILL AND  
TESTAMENT of ALFRED BENJAMIN  
GOMES of No.90, Fifth Lane,  
Colpetty in Colombo, deceased

No.14666 )  
Testamentary )  
Jurisdiction )

1. Stephen Wilfred Gomes  
c/o Aitken Spence and  
Company Limited, Colombo

and

2. The Honourable Mr. Hema Henry  
Basnayake of "Elibank House"  
Elibank Road, Havelock Town  
in Colombo. Petitioners

WE, Paul Melius de Silva Seneviratne not being a christian do hereby solemnly sincerely and truly declare and affirm and Cyril Vethecan of Colombo and Don Joachim Halackone of 89, Lewis Place, Kudapandura, Negombo, make oath and say as follows:-

R.45.

Affidavit of  
S.Vethecan and  
Others in  
Testamentary  
Case No.14666.

14th September,  
1955.

Exhibits

R.45.

Affidavit of  
S.Vethecan and  
Others in  
Testamentary  
Case No.14666.  
14th September,  
1955  
- continued.

1. I, Paul Melius de Silva Seneviratne, am the Notary who attested the Last Will and Testament of Alfred Benjamin Gomes late of No.90, Fifth Lane Colpetty in Colombo, deceased bearing No.1984 dated the 21st day of December 1948 and we, Cyril Vethecan and Don Joachim Halackone, are the two witnesses to the said Last Will.

2. On the 21st day of December 1948 we, Paul Melius de Silva Seneviratne, Cyril Vethecan and Don Joachim Halackone, were personally present and saw the said Alfred Benjamin Gomes subscribe his name to the paper writing marked "A" now produced and shown to us and at the same time and place the said Alfred Benjamin Gomes declared the same to be his Last Will and Testament and in testimony whereof and at the request of the said Alfred Benjamin Gomes and in the presence of one another I Paul Melius de Silva Seneviratne as the Notary attesting the said last Will and We, Cyril Vethecan and Don Joachim Halackone as witnesses to the said last Will subscribed our names thereto and the signature of the said Alfred Benjamin Gomes is in the handwriting of the said Alfred Benjamin Gomes and the signatures of us the said Cyril Vethecan and Don Joachim Halackone are in our true handwriting, and I the said Paul Melius de Silva Seneviratne as Notary attested the execution of the said last Will and Testament

3. The said Alfred Benjamin Gomes at the time of the execution of the said last Will and Testament appeared to be of sound mind memory and understanding.

Read over signed and affirmed to  
by Paul Melius de Silva Seneviratne at Colombo this 14th day of  
September 1951

Sgd: Illegibly

Before me,  
Sgd: A.V.Pushpadevi Joseph  
Com. for Oaths.

Read over signed and sworn to by  
Cyril Vethecan at Colombo this  
14th day of September, 1951

Sgd:  
C.Vethecan

Before me,  
Sgd: A.V.Pushpadevi Joseph  
Commissioner for Oaths.

Read over signed and sworn to by  
Don Joachim Halackone at  
this day of 1951

Before me,

Justice of the Peace.

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R.65. - REPORT OF EXAMINER OF QUESTIONED DOCUMENTSExhibits

Lawrie Muthu Krishna

R.65.

Prabhakar Muthu Krishna and Dinhar Muthu Krishna

Report of  
Examiner of  
Questioned  
Documents.

Examiners of Questioned Documents

19th September 1955

15th September,  
1955.Re D.C. Case No. 15908/T.

10 I have carefully examined the last Will in the above-mentioned case for the purpose of ascertaining whether the signature of the deceased was in the hand of the writer of the comparison Standards which consisted of a number of Bank of Ceylon Cheques before and after the execution of the last Will. I was further requested to ascertain whether the signature of C.Vethecan appearing on the last Will was in his hand and for this purpose too Comparison Standards were supplied.

20 I shall deal with each aspect separately and for purposes of convenience will take up the Sinhalese signature at the bottom of the last Will, first

1. A characteristic difference may be observed if the 'nayana' in its relation to the 'alapilla' is noticed. In the Standards the vowel stroke is disjunct and not written continuously as seen in the signature on the Will.
2. If the 'yayana' in the Standard signatures are examined it will be observed that it ends in the normal customary manner which is a hook head or circle of some sort, whereas this type of ending is completely absent in the Will signature.
3. In the Standards the 'ispilla' over the 'yayana' and ends parallel to the upstroke, whereas in the Will signature it is written parallel to the base.
4. The commencing and terminal heads of the 'payana' in the Standards, if carefully examined is found to be much closer to each other than the unusual distance noticeable in the Will signature.
- 40 5. The 'papilla' of the last letter 'thayana' as seen in the Standards show a bold squarish movement which is repeated in signatures before and after the date of the Will signature, which in turn is found to be restricted in movement.

Exhibits

R.65.

Report of  
Examiner of  
Questioned  
Documents.

15th September,  
1955

- continued.

6. The 'matharanshaya' which is the vowel stroke under the 'payana' in the Standards signature exhibit either a slight ending curve or an inward tick, but in no instance is there a commencing tick as seen in the Will signature.

7. The commencing stroke of the 'ayana' which is the head of that letter shows a firm downward sloping movement which in many cases is a sharp tick, whereas in the Will signature we find a weak, long, contrary angular movement.

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Reasons in support of the opinion that the signature of C.Vethecan appearing on the last Will is not in the hand of the writer of the Comparison Standards supplied me.

a. The signature on the last Will shows a much firmer and more youthful hand as against the shaky fist evident of old age and partial loss of muscular control seen in the standards.

b. The capital 'C' in the Standards ends with a downward tick as against the smooth upward curve seen in the Will signature.

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c. The full stop after the Capital letter 'C' in the Standards is placed on the right of the letter, whereas in the Will signature it is underneath the letter. This point becomes important when taken in conjunction with the other dissimilarities.

d. The capital letter 'V' in the Will signature ends in an outward open tick which is entirely absent in the Standard signatures.

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e. If this same letter is observed it will be noticed that the ending part of this letter is comprised of a fresh piece of writing and this sticks out at an angle which is not normal to the flow of the letter.

f. The downstroke of the letter 't' is formed with a separate movement in the Standards, whereas in the Will signature it is formed with a continuous movement from the preceding letter 'e'.

g. The cross-bar of the letter 't' in the Standards is used to form the downstroke of the following letter 'h' whereas in the Will signature the cross-bar stands out independently and alone.

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h. The letter 'o' in the surname of the Standard

signature is written more or less like the letter 'e', whereas in the Will signature no such formation is visible.

- i. The ending stroke or point of the Standard signatures give an impression of congestion or a retraced ending as against the smooth ending seen in the Will signature.
- j. The Standard signatures clearly show that the surname is composed of a series of separate dis-  
junct sections, whereas the Will signature con-  
veys the impression of continuity.
- k. If the cross-bar of the letter 't' is examined in the Will signature it will be observed that it extends to cover the letter 'c', whereas in the Standard signatures such an elongation or coverage does not take place.

Exhibits

R.65.

Report of  
Examiner of  
Questioned  
Documents.

15th September,  
1955

- continued.

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Sgd: Dinkar Muthu Krishna

Examiner of Questioned  
Documents.

20 19th September, 1955.

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